ENTERED ON DOCKET

DATE 3-10-93

FILED

MAR - 9 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARTHA MARTINSEN, Plaintiff, vs. SAMISSA HEALTH CARE CORPORATION, Defendant.	)	Case No. 92-C-145 B

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the plaintiff, Martha Martinsen, hereby stipulates with the defendant, Samissa Health Care Corporation, that this action shall be dismissed with prejudice. Each party is to bear its own costs and attorney fees.

Richard D. White, Jr.
White & Reno
Suite 510
111 W. Fifth Street
Tulsa, Oklahoma 74103
ATTORNEYS FOR PLAINTIFF
MARTHA MARTINSEN

J. Ronald Petrikin, OBA 7092
Madalene A.B. Witterholt, OBA 10528
CROWE & DUNLEVY
A Professional Corporation
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(918) 592-9800
ATTORNEYS FOR DEFENDANT
SAMISSA HEALTH CARE CORP.

182.93AMAW

ENTERED ON DOCKET
DATE MAR 10 1993

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

COMMUNITY BANK & TRUST COMPANY,

Plaintiff,

vs.

UNITED STATES OF AMERICA, ex rel., INTERNAL REVENUE SERVICE, C. RABON MARTIN, STEVEN R. HICKMAN, JON B. COMSTOCK, RAY BOWLINE, individually, BOWLINE CONSTRUCTION COMPANY, INC., and PAUL E. GARRISON,

Defendants.

No. 89-C-503-C

FILED
MAR - 9 1993
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ORDER

This interpleader action has now been completed. The funds paid into the registry of the Court have been disbursed and no objection has been filed to administrative closure.

It is the Order of the Court that the above styled and numbered case be administratively closed.

IT IS SO ORDERED this 9th day of March, 1993.

H. DALE COOK
UNITED STATES DISTRICT JUDGE

41

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR - 9 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

NATIONAL FOOTBALL SCOUTING, INC., HARRY W. BUFFINGTON and LESLIE MILLER, Plaintiffs, v. CONTINENTAL ASSURANCE COMPANY, et al. Defendants.	Case No. 86-C-843-E **Consolidated with** **Case No. 87-C-588-E**
SUPERIOR HARD-SURFACING COMPANY, INC., and HAROLD WEST, Plaintiffs, v. CONTINENTAL ASSURANCE COMPANY, et al., Defendants.	Case No. 87-C-588-E Consolidated with Case No. 86-C-843-E

ENTERED ON DOCKET
DATE MAR 10 1993

AGREED ORDER OF DISMISSAL

The Court, having before it the Joint Motion of the Consolidated Plaintiffs and Defendant Continental Assurance Company to Dismiss their respective claims against each other, and being fully apprised of the fact of a compromise and settlement between these parties, does find good cause and hereby orders the following:

(1) The claims of the Consolidated Plaintiffs against Continental Assurance Company are hereby dismissed with prejudice.

(2) The Consolidated Plaintiffs' Renewed Application for Award of Attorney's Fees and Costs pursuant to Fed. R. Civ. P.

37, filed on November 17, 1992, is hereby withdrawn.

(3) The counter-claims of Continental Assurance Company versus the Consolidated Plaintiffs are hereby dismissed with prejudice.

United States District Judge

AGREED:

Sheppard F. Miers, Jr., (OBA #6178)
Gerald L. Hilsher, (OBA #4218)
HUFFMAN ARRINGTON KIHLE GABERINO & DUNN
A Professional Corporation
100 West Fifth Street
Suite 1000
Tulsa, Oklahoma 74103-4219
(918) 585-8141

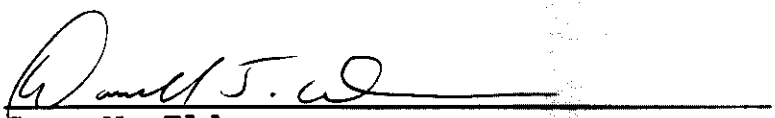
Steven E. Smith, (OBA #8410)
1201 Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 582-4107

COUNSEL FOR PLAINTIFFS, NATIONAL FOOTBALL SCOUTING, INC., ET AL.

James R. Hicks, (OBA #11345)
MORREL, WEST, SAFFA, CRAIGE & HICKS, INC.
City Plaza West, Suite 900
5310 East 31st Street

Tulsa, Oklahoma 74135
(918) 664-0800

COUNSEL FOR PLAINTIFFS, SUPERIOR HARD-SURFACING COMPANY, INC., ET AL.



Gary M. Elden
Darrell J. Graham
GRIPPO & ELDEN
227 West Monroe Street, Suite 3600
Chicago, Illinois 60606
(312) 704-7700

ATTORNEYS FOR CONTINENTAL ASSURANCE COMPANY

ENTERED ON DOCKET
DATE MAR 10 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 9 1993
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

THRIFTY RENT-A-CAR SYSTEM, INC., an Oklahoma corporation,

Plaintiff,

vs.

LEE HAMPTON, INC., a foreign corporation, KENNETH L. KARSTEN, an individual, and JOHN H. HOULT, an individual,

Defendants.

Case No. 91-C-839-E

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the parties in the above styled action and pursuant to a certain agreement of settlement and compromise and FRCP 41 and hereby stipulate to the dismissal of defendants' counterclaims with prejudice.

Mark Dreyer, OBA #14998
401 South Boston
Suite 2100
Tulsa, OK 74103

ATTORNEY FOR PLAINTIFF

Randall T. Duncan, OBA #13593
P.O. Box 1679
Tulsa, OK 74101
(918) 743-1276

ATTORNEY FOR DEFENDANTS

600-2.62/jswp

DATE 3-10-93

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 08 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

SCOTT O'DELL HINDS, an individual,

Plaintiff,

vs.

PEACHTREE MEDICAL RENTALS, INC., a Georgia corporation; PEACHTREE PATIENT CENTER, INC., a Georgia corporation; PEACHTREE TECHNOLOGIES, INC., a Georgia corporation; PEACHTREE PATIENT CENTER CORPORATION, a Georgia corporation; INVACARE CORPORATION, an Ohio corporation; WHEELCHAIR HOUSE, LTD., a Colorado corporation; BILL TUTTLE, an individual; CRAIG HOSPITAL, a Colorado corporation,

Defendants.

No. 91-C-915-B

ORDER OF DISMISSAL OF CROSS CLAIMS

Upon Application of Defendants and Cross Claim Plaintiffs, Invacare Corporation, Peachtree Patient Care Center, Inc., Bill Tuttle, and Wheelchair House, Ltd. and good cause being shown;

IT IS SO ORDERED that the Cross Claims filed by Defendants and Cross Claim Plaintiffs, Invacare Corporation, Peachtree Patient Care Center, Inc., Bill Tuttle, and Wheelchair House, Ltd., against the Defendants and Cross Claim Defendants, Invacare Corporation, Peachtree Medical Rentals, Inc., Peachtree Patient Center, Inc., Peachtree Technologies, Inc., Wheelchair House, Ltd., Craig Hospital, Bill Tuttle, and Peachtree Patient Center Corporation, be dismissed with prejudice.

DATED this 8th day of ~~February~~ March, 1993.

S/ THOMAS R. BRETT,

UNITED STATES DISTRICT JUDGE

WDP

ENTERED ON DOCKET

DATE 3-10-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE FEDERAL SAVINGS ASSOCIATION BY AND THROUGH ITS CONSERVATOR, THE RESOLUTION TRUST CORPORATION, AS SUCCESSOR IN INTEREST TO CERTAIN ASSETS OF STATE FEDERAL SAVINGS AND LOAN ASSOCIATION,

Plaintiff,

vs.

AMOS A. BAKER, II; LINDA C. BAKER; BARBARA LEA BAKER WILLIAMS; ROBERT O. WILLIAMS, JR.; PAUL E. BAKER, JR., INDIVIDUALLY AND AS TRUSTEE OF THE PAUL E. BAKER, JR. TRUST CREATED PURSUANT TO INDENTURE DATED OCTOBER 6, 1982; EVELYN L. BAKER; HARVARD TOWER MORTGAGE CO., INC., AN OKLAHOMA CORPORATION; AND JOHN F. CANTRELL, COUNTY TREASURER OF TULSA COUNTY, OKLAHOMA,

Defendants,

And

FIRST NATIONAL BANK AND TRUST COMPANY OF TULSA,

Additional Party Defendant.

Case No. 90-C-806-B

FILED

MAR 08 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DEFICIENCY JUDGMENT

Now on this 8th day of Mar., 1993, this matter comes on for hearing before this Court upon the Motion for Leave to enter Deficiency Judgment filed herein by the Resolution Trust Corporation as Receiver for State Federal Savings Association (the "RTC"). The Court, after having examined the files and records in this cause and being fully advised in the premises, finds as follows:

1. On September 4, 1991, the RTC recovered judgment, in personam and in rem, against Defendants Amos A. Baker, II, Linda C. Baker, Barbara Lea Baker Williams and Paul E. Baker, Jr., individually and as Trustee of the Paul E. Baker, Jr. Trust created pursuant to indenture dated October 6, 1982, for the principal sum of $2,418,993.52, plus accrued interest through August 31, 1990, in the sum of $185,960.88, plus continuing interest from August 31, 1990, until paid at the rate of $688.74 per day, plus late charges, overdrawn escrow balance and abstracting costs of $39,541.47, together with all costs incurred herein including a reasonable attorneys' fee in the amount of $10,000 and further judgment foreclosing the Mortgage covering the real property described in the RTC's Complaint ("Subject Property").

2. On January 5, 1993, pursuant to the judgment of this Court and upon execution issued herein, the Subject Property was sold at a Sheriff's Sale conducted by the Sheriff of Tulsa County, Oklahoma, for the sum of $804,000, that being the highest sum bid therefore.

3. A hearing on the RTC's Motion to Confirm the Sheriff's Sale held on January 5, 1993, is scheduled for February 17, 1993.

4. Pursuant to the Judgment entered herein, the proceeds of said sale were to be applied as follows:

a. First, to the payment of delinquent ad valorem taxes due;

b. Second, to the payment of all costs and attorneys' fees incurred by the RTC;

c. Third, to the payment of the judgment lien of the RTC; and

d. Fourth, the balance, if any, to be paid to the Clerk of this Court to await further order from the Court.

5. The fair market value of the Subject Property is $1,200,000 as evidenced by the Sheriff's Appraisal filed herein.

6. As of January 5, 1993, the amount due under the RTC's judgment was $2,418,993.52, plus accrued interest of $777,588.54, plus late charges, overdrawn escrow balance and abstracting costs of $39,541.47, plus costs and attorneys' fees in the sum of $10,000.

7. After crediting the fair market value of the Subject Property to the judgment in accordance with Okla. Stat. tit. 12, § 686, there remains a deficiency amount outstanding of $2,046,123.53, plus interest from January 5, 1993, until paid at the rate provided for in the promissory note which is the subject of this action.

8. On January 6, 1993, the RTC filed its Motion for Leave to Enter a Deficiency Judgment against the Defendants Amos A. Baker, II, Linda C. Baker, Barbara Lea Baker Williams and Paul E. Baker, Jr., individually and as Trustee of the Paul E. Baker, Jr. Trust created pursuant to indenture dated October 6, 1982.

9. Defendants Amos A. Baker II, Linda C. Baker, Barbara Lea Baker Williams and Paul E. Baker, Jr., individually and as Trustee of the Paul E. Baker, Jr. Trust created pursuant to indenture dated October 6, 1982, were given proper and adequate notice of the RTC's Motion for Leave to Enter Deficiency Judgment and this Court's hearing on same and said Defendants have not objected to the RTC's Motion.

10. A deficiency judgment should, therefore, be entered in favor of the RTC and against the Defendants, Amos A. Baker, II, Linda C. Baker, Barbara Lea Baker Williams and Paul E. Baker, Jr., individually and as Trustee of the Paul E. Baker, Jr. Trust created pursuant to indenture dated October 6, 1982, in the amount of $2,046,123.53, plus interest from January 5, 1993, until paid at the rate provided for in the promissory note which is the subject of this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Resolution Trust Corporation, as Receiver for State Federal Savings Association, be and hereby is awarded a Deficiency Judgment against the Defendants Amos A. Baker, II, Linda C. Baker, Barbara Lea Baker Williams and Paul E. Baker, Jr., individually and as Trustee of the Paul E. Baker, Jr. Trust created pursuant to indenture dated October 6, 1982, in the amount of $2,046,123.53, plus interest from January 5, 1993, until paid at the rate provided for in the promissory note which is the subject of this action.

IT IS SO ORDERED this 8th day of Mar., 1993.

S/ THOMAS R. BRETT

THE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE MAR 9 1993

Linda K. Denney,

Plaintiff,

v.

Donna E. Shalala, Secretary of Health and Human Services,

Defendant.

Case No. 91-C-556-E

FILED
MAR 09 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

O R D E R

The Court, having considered Petitioner's Application and Motion for Final Order for Attorney Fees Under 28 U.S.C. Section 2412, the Equal Access to Justice Act (EAJA), and having reviewed the arguments and representations of counsel, finds:

1) Petitioner requests attorney fees pursuant to 28 U.S.C. Section 2412, based upon a successful challenge of Defendant's decision denying Plaintiff's Social Security Disability benefits (SSD). The parties have stipulated that $100.00 per hour for $3930.00 is a fair and reasonable amount under 28 U.S.C. Section 2412.

2) The Court finds that the Defendant's position was not substantially justified, nor reasonable as to the facts of the case in originally denying the benefits, and that an award under the EAJA is justified, and the Court hereby sustains Petitioner's Motion for attorney fees.

3) That counsel, Mark E. Buchner, for Plaintiff has expended 39.3 hours in pursuit of the Plaintiff's claim in the United States District Court for the Northern District of Oklahoma and that $100.00 per hour is a fair and reasonable hourly fee, and that a fee of $3930.00 shall be awarded to Mark E. Buchner, Attorney at Law, and costs in the amount of $141.90.

4) No attorney fee award has yet been made by the Defendant to Plaintiff's representive in the administrative proceedings before the Social Security Administration. Petitioner shall advise the Social Security Administration of this award and any request for fees related to the administrative proceedings, if any.

5) If an award of fees for work performed in this court is sought and awarded under 42 U.S.C. Section 406, Petitioner shall return to the Plaintiff the lesser of the Section 406 award or the amount awarded by this Order, pursuant to Weakley vs Bowen, 803 F.2d 575 (10th Cir., 1986).

IT IS THEREFORE SO ORDERED.

DATED this 11th day of March, 1993.

United States Judge

APPROVED:

Mark E. Buchner, OBA #1279
Petitioner and Attorney for Plaintiff
3726 South Peoria
Suite 26
Tulsa, Oklahoma 74105
(918) [redacted]

Peter Bernhardt OBA No. 7141
Assistant U.S. Attorney
Northern District of Oklahoma
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

ENTERED ON DOCKET
DATE MAR 9 1993

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
IN OPEN COURT
MAR 8 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM, INC., an Oklahoma corporation,

Plaintiff,

vs.

STEVE ROBERTSON, an individual,

Defendant.

Case No. 92-C-937-C

JUDGMENT

This matter comes on for hearing this March 8, 1993 upon application and affidavit of the plaintiff duly made for judgment by default. It appears that the defendant herein is in default and that the Clerk of the United States District Court for the Northern District of Oklahoma has previously searched the records and entered the default of the defendant. It further appears upon plaintiff's affidavit that defendant is indebted to plaintiff in the sum of $261,217.99 for failure to pay in accordance with a License Agreement Guaranty, a Vehicle Lease Guaranty, and a Letter Agreement, together with interest, that default has been entered against defendant for failure to appear and the defendant is not an infant or incompetent person, and is not in the military service of the United States. The Court having heard the argument of counsel and being fully

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advised, finds that judgment should be entered for the plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff recover from defendant the sum of $261,217.99, together with interest as allowed by law, costs in the sum of $120.00 and ~~reasonable attorney's fees in the sum of $_____, for all of which let execution issue.~~ Post Judgment interest at 3.45%

JUDGMENT RENDERED this 8th day of March, 1993.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED FOR ENTRY:

W. Kyle Tresch

JAMES L. KINCAID, OBA No. 5021
KATHRYN L. TAYLOR, OBA No. 3079
W. KYLE TRESCH, OBA No. 13709

- Of the Firm -

CROWE & DUNLEVY
A Professional Corporation
500 Kennedy Building
Tulsa, Oklahoma 74103-3313
(918) 592-9800

ATTORNEYS FOR PLAINTIFF

72.93A.JSA

ENTERED ON DOCKET
DATE MAR 9 1993

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR - 8 1993
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD E. GLASS,

Defendant.

CIVIL ACTION NO. 92-C-890-C

Notice Of
VOLUNTARY DISMISSAL

Upon full satisfaction of the terms of the Settlement Agreement entered on January 8, 1993 between the defendant, Edward E. Glass and the plaintiff, United States of America, the United States of America hereby voluntarily dismisses its complaint filed herein.

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States of America

Wyn Dee Baker

WYN DEE BAKER, OBA# 465
Assistant United States Attorney
3900 US Courthouse
Tulsa, OK 74103
918/581-7463

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of March, 1993 a true and correct copy of the foregoing was mailed, postage prepaid addressed thereon as follows:

Jim Heslett
Attorney of Record

Wyndee Baker
Assistant United States Attorney

WDB:am

ENTERED MAR 5 1993
DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SCOTT O'DELL HINDS, an individual,

Plaintiff,

vs.

PEACHTREE PATIENT CENTER, INC., a Georgia corporation; PEACHTREE PATIENT CENTER CORPORATION, a Georgia corporation; INVACARE CORPORATION, an Ohio corporation; WHEELCHAIR HOUSE, LTD., a Colorado corporation; BILL TUTTLE, an individual; and CRAIG HOSPITAL, a Colorado corporation,

Defendants.

Case No. 91-C-915-B

FILED
MAR 04 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DISMISSAL WITH PREJUDICE

This matter having come before the Court upon the Stipulation for Dismissal With Prejudice by and between Plaintiff and Defendants Peachtree Patient Center, Inc., Peachtree Patient Center Corporation, and Bill Tuttle, and the Court having read the Stipulation and being fully advised in the premises, finds that this Stipulation of Dismissal With Prejudice should be and is hereby approved by the Court.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the above captioned action and all causes arising therefrom are dismissed with prejudice as to Defendant Peachtree Patient Center, Inc., Peachtree Patient Center Corporation, and Bill Tuttle, each party to bear their own costs.

IT IS SO ORDERED this 4th day of March, 1993.

UNITED STATES DISTRICT JUDGE

NJS/css/4343/hinds.dis

FILED
MAR 04 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE MAR 5 1993

HEALTH CONCEPTS IV, INC., PEGASUS RECOVERY CENTERS, INC., CEDAR VALE, INC., and CEDAR VALE HOSPITAL, INC., Debtors,	Bankruptcy Case No. 92-00243-W (Chapter 11)
S. WILLIAM MANERA, TRUSTEE FOR THE ESTATE OF CEDAR VALE, INC., Plaintiff, vs. ST. LUKE'S HOSPITAL, INC., Defendant.	Adversary Case No. 92-0327-W District Court Case No. 92-C-1086-B

O R D E R

Before the Court for consideration is the Defendant's Demand for Jury Trial and Motion for Withdrawal of Reference and Transfer to District Court.

Defendant, St. Luke's Hospital, Inc. ("St. Luke's"), contends it is entitled to a trial by jury on all issues raised by Plaintiff's Complaint and therefore the adversary proceeding must be transferred to this Court.[1] Plaintiff, the trustee for the estate of Cedar Vale, Inc. ("the Trustee"), contends Defendants demand for a jury trial and motion to withdraw the reference are untimely and substantively unfounded. Upon review of the pleadings, the arguments of the parties, the relevant legal authorities, and

[1] The Tenth Circuit Court of Appeals has concluded that a bankruptcy court does not have the power to conduct a jury trial. In re Kaiser Steel Corp., 911 F.2d 380, 389-92 (10th Cir. 1990).

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the decision of the Bankruptcy Court on these issues, the Court concludes St. Luke's is not entitled to a jury trial and therefore its demand for such and related motion for withdrawal of the reference should be denied.

Cedar Vale, Inc. ("Cedar Vale") is one of four related corporate debtors whose cases are jointly administered under 11 U.S.C. Chapter 11 in the United States Bankruptcy Court for the Northern District of Oklahoma. All four cases are currently administered by the same Trustee. Each debtor had been in the business of conducting drug and alcohol treatment programs, using the bed facilities and billing services of their hospital institutions, pursuant to contract.

On February 28, 1992, St. Luke's filed a motion in the main bankruptcy case to reject its executory contract with Cedar Vale pursuant to 11 U.S.C. §365. The motion to reject was granted by the bankruptcy court on May 14, 1992.

On October 9, 1992, the Trustee filed his complaint commencing an adversary proceeding against St. Luke's. In the complaint, the Trustee alleged that Cedar Vale ran a drug and alcohol treatment program using the bed facilities and billing services of St. Luke's; that pursuant to this arrangement, St. Luke's has collected over $300,000 of Cedar Vale's money; that approximately half of this sum was collected before the filing of Cedar Vale's Chapter 11 case; and that St. Luke's will not turn over any part of these funds to Cedar Vale.

The Trustee prayed for an order of turnover under 11 U.S.C.

§542; for a money judgment against Cedar Vale for any sums not turned over; for avoidance and recovery of preferential or fraudulent pre-petition transfers under 11 U.S.C. §§ 547,548,550; for avoidance and recovery of unauthorized post-petition transfers under 11 U.S.C. §§549, 550; for damages for violation of the automatic stay afforded by 11 U.S.C. §362; and for an injunction to prevent St. Luke's from dissipating any of the funds in question. The complaint sought immediate injunctive relief in the form of a temporary restraining order ("TRO").

On October 20, 1992, the request for TRO came on for hearing, and was granted. A written order was filed on October 26, 1992, indicating that St. Luke's "did not appear but, through its attorney, agreed to the entry of this order."

Meanwhile, even as the complaint was filed and the TRO was pending, St. Luke's made arrangements with the Trustee for disposition of Cedar Vale's equipment and furniture left on St. Luke's premises. St. Luke's made oral offer to purchase such items in the first week of October, 1992, and made written offer in the second week of October, 1992. On November 17, 1992, the Trustee filed in the main bankruptcy case a motion for approval of sale of such items to St. Luke's.

On November 16, 1992, St. Luke's filed its answer in the adversary proceeding. Nine days later, on November 25, 1992, St. Luke's filed its "Demand for Jury Trial, Motion for Withdrawal of Reference and Transfer to the District Court and Brief in Support." This jury demand and motion was filed in the bankruptcy court as

well as in this court.

On January 12, 1993, the bankruptcy court held a hearing on Defendant's demand for a jury trial and Plaintiff's objections thereto. In an order dated January 15, 1993, the bankruptcy court concluded Defendant's jury demand was timely but lacking substantive merit. The bankruptcy court concluded that the Defendant had submitted itself to that court's equitable jurisdiction by moving for rejection on an executory contract pursuant to 11 U.S.C. §365 and thus Defendant did not have the right to a jury trial. In re Hallahan, 936 F.2d 1496, 1505 n. 10 (7th Cir. 1991). Alternatively, the bankruptcy court concluded that if Defendant did have a right to a jury trial, such right had been waived.

On January 25, 1993, the parties filed a "Notice to the Court" of Judge Wilson's order finding that St. Luke's was not entitled to a jury trial as a matter of law. On January 26, 1993, Defendant filed a "Motion to Determine Validity of Bankruptcy Judge's Order Granting Trustee's Objection to Defendant's Demand for Jury Trial."

Defendant contends Judge Wilson lacked authority to rule on the jury trial issue and therefore this Court should consider it invalid or treat it as proposed findings of fact and conclusions of law. Plaintiff responded to the Defendant's motion on February 5, 1993, and asked this Court to treat Defendant's "motion" as a request for leave to appeal an interlocutory decision of the bankruptcy court.

The label attached to the current procedural status of this

case has no bearing on the outcome. This Court agrees with, adopts, and incorporates as though set out herein, the January 15, 1993, order of the bankruptcy court denying Defendant's demand for a jury trial. The Defendant lost any right it may have had to a jury trial when it submitted to the jurisdiction of the bankruptcy court and sought equitable relief from the same. (See cases cited in bankruptcy court order at 9-10). Therefore, Defendant's demand for a jury trial must be denied.

Defendant's right to a jury was the sole basis for Defendant's motion to withdraw the reference and transfer the case to district court. Thus, Defendant's motion to withdraw the reference and transfer the case must also be denied.

For these reasons, Defendant's Demand for Jury Trial and Motion for Withdrawal of Reference and Transfer to District Court should be and hereby is DENIED.

IT IS SO ORDERED THIS 4th DAY OF MARCH, 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE MAR 5 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHN W. WHALEN,

Plaintiff,

v.

URE CO., a Texas corporation, formerly UNIT RIG AND EQUIPMENT COMPANY, a Texas corporation; UNIT RIG INC., a Delaware corporation; MRL ACQUISITION CORP., a Delaware corporation; and TEREX CORPORATION, a Delaware corporation,

Defendants.

Case No. 88-C-1667-B

FILED
MAR -4 1993
U.S. DISTRICT COURT
NORTHERN DIST. OF OK

O R D E R

This matter comes on for consideration of Plaintiff's Application For Costs And Attorneys Fees On Appeal (#106) against Defendants Unit Rig, Inc., MRL Acquisition Corp., and Terex Corporation (hereinafter Unit Rig).

This case was initiated by Plaintiff on December 30, 1988, against Unit Rig alleging violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§601-634 (ADEA). Pursuant to jury verdict in favor of Plaintiff, the Court entered its Judgment on December 13, 1990, against Unit Rig in the amount of $106,766.95 with post-judgment interest at the rate of 7.28%. Thereafter, the Court entered its Judgment in favor of Plaintiff and against Unit Rig, for attorneys fees, for expenses recoverable as attorneys fees, and costs in the amounts of $66,195.00, $2,431.00 and $2,207.50, respectively. Further, the Court entered a Supplemental

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Judgment on December 5, 1991, in favor of Plaintiff and against Unit Rig, for attorneys fees for the period from December 13, 1990, through April 12, 1991, in the amount of $11,032.50 and for expenses recoverable as attorneys fees in the amount of $1,409.23. These three judgment amounts have been paid to Plaintiff by Unit Rig. A Release and Satisfaction of Three Judgments was entered herein on November 25, 1992.

Unit Rig appealed the jury verdict which verdict was affirmed by the Tenth Circuit Court of Appeals by Judgment entered September 10, 1992. By Order filed October 23, 1992, the Tenth Circuit granted Plaintiff's attorneys fees application and remanded the cause "to the district court to determine the appropriate amount of these fees, after taking into consideration the fees already rewarded."[1]

Plaintiff seeks attorneys fees on appeal in the amount of $29,427.50 (which includes $750.00 for attorneys fees for this Application for attorneys fees), plus costs recoverable as attorneys fees in the amount of $1,329.28 and costs on appeal of $609.75.

Unit Rig opposes such Application, arguing that in view of the jury verdict judgment and attorneys fees and costs already awarded, the additional amount of $29,427.50 should be denied, citing Handler v. Thrasher, 191 F.2d 120 (10th Cir. 1951). Further, Unit Rig argues that authority cited by Plaintiff in support of such

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[1] The Tenth Circuit directed the clerk "to issue a statement of costs in favor of the appellee in the amount of $280.25. Appellee may apply to the district court for cost of the reporter's transcript."

Application involved the Civil Rights Attorney's Fees Award Act of 1988, 42 U.S.C. §1988, as the loadstar analysis for calculating attorney fees in civil right actions, whereas this case comes under ADEA. Unit Rig also avers that Plaintiff's application for costs recoverable as attorneys fees in the amount of $1,329.28 should be denied because these are general overhead expenses, such as long distance telephone charges, copying expenses, postage and delivery expenses, and computer research, and therefore not allowable, citing 28 U.S.C. §1920, Rule 54(d), F.R.Civ.P., Rule 39, Federal Rules of Appellate Procedure, and ADEA.

Plaintiff answers Unit Rig's charge that Plaintiff's authority[2] decided pursuant to Civil rights Attorneys' Fees Award Act is not *apropos* herein by citing **Spulak v. K-Mart Corporation**, 894 F.2d 1150 (10th Cir. 1990). In that case the Tenth Circuit cited to both **Hensley** and **Ramos** as authority on other points but implicit in such citation use is an inference that no conflict exists between the Civil Rights Attorney's Fees Award Act of 1988, 42 U.S.C. §1988 and cases brought under ADEA as suggested by Unit Rig. Additionally, other courts have awarded attorneys fees in "statutory fee" cases citing **Hensley** and **Ramos**.[3] Further, Unit Rig's sole authority, **Handler**, is inapposite.

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[2] **Hensley v. Eckerhart**, 461 U.S. 424 (1983) and **Ramos v. Lamm**, 713 F.2d 546 (10th Cir. 1983).

[3] **Pennsylvania v. Delaware Valley Citizens Council**, 483 U.S. 711 (1987); (Clean Air Act); **Bhattacharya v. Kopple**, 898 F.2d 766, (10th Cir.1990) (medical malpractice case under a Kansas statute); **Mares v. Credit Bureau of Raton**, 801 F.2d 1197 (10th Cir.1986) (Truth in Lending Act, Fair Credit Reporting Act and the Fair Debt Collection Practices Act).

Unit Rig does not contest the number of attorney hours nor the attorney fee rate submitted by Plaintiff. Further, Unit Rig's voluntary appeal raised eight separate propositions of error; requested and received oral argument which was conducted in Denver, Colorado; moved for reconsideration of the judgment of the Court of Appeals and sought to stay issuance of the mandate. Additionally, Unit Rig has filed, on January 19, 1993, a Petition for Writ of Certiorari in the Supreme Court of the United States, No. 92-1236.

The Court concludes that attorneys fees on appeal, from April 12, 1991, to the date of this Order, should be awarded Plaintiff in the amount of $29,427.50 (which includes attorneys fees for this Application for attorneys fees), plus costs recoverable as attorneys fees in the amount of $421.02[4] and costs on appeal of $609.75.

IT IS SO ORDERED this 4th day of March, 1993.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

[4] The Court disallows computer research costs in the amount of $908.26. Ortega v. City of Kansas City, Kan., 659 F.Supp. 1201 (D.Kan.1987).

ENTERED ON DOCKET
DATE MAR 5 1993
FILED
MAR -4 1993
RICHARD M. LAWRENCE
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DYCO PETROLEUM CORPORATION,

Plaintiff,

vs.

ANR PIPELINE COMPANY,

Defendant.

Case No. 86-C-1097-E

AMENDED JUDGMENT

This matter having been bifurcated and the first phase having come before the Court and a duly impaneled jury in a trial in Tulsa, Oklahoma, commencing January 17, 1990 and concluding on February 15, 1990, the Honorable H. Dale Cook presiding, and the parties having presented evidence and testimony in open court, the Court having fully instructed the jury in the law, and certain issues having been submitted to the jury through five special interrogatories, and the jury, after due deliberation, having returned the attached special verdict, the Court having read the verdict in open court and having polled each juror and determined that the verdict was affirmed by each individual juror, the Court now finds and concludes and enters judgment on the jury verdict as follows:

With respect to Dyco's claims for breach of contract prior to June 1, 1985, ANR breached the following contracts:

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Dyco Contract Number	Well Name	ANR Contract Number	ANR Trial Exhibit Number
1	Campbell-Webb	3452	8020
3	Doyle Davis #1	0055	8000
5	Gaines #1-15 and	3802	8021
	Gaines #3-15	3802	8021
6	Hefley #1-13	3441	8019
7	Hazlett #1	2485	8008
10	Linville #1-32	2775	8013
11	Littauer #1	2222	8004
13	Merrick #1-11	2230	8005
	Merrick #2-2	2230	8005
	Potter State #1-20	2230	8005
	and Merrick #1-10	2230	8005
14	Nagle-State #1-10	2770	8012
16	Smith #1-31	3009	8016
17	Thornton #1-30	2676	8011
	Simmons #2	2676	8011
	Simmons #1-A and	2676	8011
	Peffer #1-4	2676	8011
19	Whittenburg #2	3273	8018
20	Nickelson #1	0392	8001
21	Walters #1-11	2776	8014
23	Whittenburg #1	2555	8009
	Finnell #2 and	2555	8009
	Walters #1-19	2555	8009
44	Campbell-Webb #1-28 (ENR)	3221	8017
	Brewer #1-26 and	3221	8017
	Brewer #2-27	3221	8017

And ANR did not breach the following contracts:

Dyco Contract Number	Well Name	ANR Contract Number	ANR Trial Exhibit Number
9	Hannigan Unit #1	0391	8023
12	Mordecai #1 (Red)	0867	8002
	Mordecai #1 (Spgr)	0867	8002
15	Preston #1	2145	8003
32	Staley-Howerton #1-8	4371	8022
	Hart #1-6	4371	8022
	Clear-Ferguson #1-25	4371	8022
	Smith #1-21 and	4371	8022
	Stevens #1-7	4371	8022
37	Strecker #1	0259	8024
39	Bergner #1-21	2243/4641	8006
	Mast #1-16	2243/4810	8007
47	Clark #1-33	0868/4984	Plaintiff's Exhibit 38

With respect to Dyco's claims for breach of contract after June 1, 1985, the jury found, from a preponderance of the evidence, that ANR was rendered unable wholly or in part to take its system-wide contract obligation of gas purchases from its contract producers due to an event of force majeure and that the condition of force majeure was still ongoing to the date of the verdict. Accordingly, the Court enters judgment that ANR is not liable on any of Dyco's claims for breach of contract after June 1, 1985 continuing to the date of the verdict, February 15, 1990.

The jury further found, with respect to ANR's affirmative defense of commercial impracticability, that ANR was excused from performance of the contracts due to commercial impracticability. Accordingly, the Court enters judgment that ANR's performance under the contracts was excused by reason of commercial impracticability, commencing June 1, 1985.

The jury further found that with respect to five contracts (Contract Nos. 3, 9, 15, 20 and 37), ANR proved from a preponderance of the evidence a usage of trade that when deliveries or takes are affected by force majeure and the volume of gas delivered is less than the otherwise applicable DCQ, then the DCQ is deemed to be the volume actually delivered. In other words, if a party is in force majeure, there is no obligation to take or pay for more gas than is actually delivered. Thus, ANR is excused from both its obligation to take and its obligation to pay under contracts 3, 9, 15, 20 and 37.

Accordingly, on Dyco's claims for breach of contract for the time period prior to June 1, 1985, judgment is entered in favor of Dyco and against ANR with respect to Contracts No. 1, 3, 5, 6, 7, 10, 11, 13, 14, 16, 17, 19, 20, 21, 23 and 44. Judgment is entered against Dyco and in favor of ANR with respect to Dyco's claims for breach of contract on Contracts No. 9, 12, 15, 32, 37, 39 and 47 for the time period prior to June 1, 1985. Judgment is entered against Dyco and in favor of ANR with respect to all of Dyco's claims on all contracts from and after June 1, 1985 to the date of the jury's verdict (February 15, 1990).

The parties having waived a jury for the remaining proceedings in the case, and the case having been transferred to the undersigned, and further proceedings having taken place, following the Court's telephone conference with the parties of June 18, 1992, the Court retraced the tortuous path of this case pertaining to resolution of those issues relevant to damage calculation. And finding, as Plaintiff now appears finally to concede (see docket #843), that all relevant issues have been decided so that nothing remains to detain the Court from entering its damage calculation. The Defendant stated in the June 18th conference, it will accept the figure proffered by Plaintiff. After review of the record the Court finds that it should adopt that figure as well.

IT IS THEREFORE ORDERED that the amount of the judgment in this case shall be the sum of $360,239.00.

So ORDERED this 8th day if March, 1992.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN OPEN COURT

FEB 15 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

VERDICT

Special Interrogatories

Dyco's Claim for Breach of Contract Prior to June 1, 1985:

Interrogatory No. 1. Dyco alleges that ANR failed to pay for gas well gas not taken less than the minimum quantity of gas required to be taken on an annual basis. We the jury find, from a preponderance of the evidence, as to Dyco's claim for breach of contract prior to June 1, 1985 as follows:

(a) For Dyco on all contract claims:

Yes _____ No X

(b) For ANR on all contract claims:

Yes _____ No X

(Only if your unanimous finding is "No" as to both (a) and (b) above will you proceed to determine Interrogatory No. 2. If your unanimous finding is "Yes" as to either (a) or (b), then you should directly proceed to consider Interrogatory Nos. 3, 4 and 5).

Interrogatory No. 2. As to Dyco's claim for breach of the contracts prior to June 1, 1985; if you do not find in favor of either Dyco or ANR on all contract claims; you should proceed to consider whether you find, by a preponderance of the evidence, a breach of contract as to each individual contract.

(Below is a list of each contract and the well it relates to. From the preponderance of the evidence, do you find by a unanimous verdict that ANR breached this contract. So indicate by checking "Yes" or "No" as to each contract.)

Dyco Contract Number	Well Name	ANR Contract Number	ANR Trial Exhibit Number	Did ANR Breach Contract
~~1~~	Campbell-Webb	3452	8020	Yes X No __
~~3~~	Doyle Davis #1	0055	8000	Yes X No __
~~5~~	Gaines #1-15 and	3802	8021	Yes X No __
	Gaines #3-15	3802	8021	
~~6~~	Hefley #1-13	3441	8019	Yes X No __
~~7~~	Hazlett #1	2485	8008	Yes X No __
~~9~~	Hannigan Unit #1	0391	8023	Yes __ No X
~~10~~	Linville #1-32	2775	8013	Yes X No __
~~11~~	Littauer #1	2222	8004	Yes X No __
~~12~~	Mordecai #1 (Red),	0867	8002	Yes __ No X
	Mordecai #1 (Spgr),	0867	8002	
~~13~~	Merrick #1-11,	2230	8005	Yes X No __
	Merrick #2-2,	2230	8005	
	Potter State #1-20 and	2230	8005	
	Merrick #1-10	2230	8005	
~~14~~	Nagle State #1-10	2770	8012	Yes X No __
~~15~~	Preston #1	2145	8003	Yes __ No X
~~16~~	Smith #1-31	3009	8016	Yes X No __
~~17~~	Thornton #1-30,	2676	8011	Yes X No __
	Simmons #2,	2676	8011	
	Simmons #1-A, and	2676	8011	
	Peffer #1-4	2676	8011	
~~19~~	Whittenburg #2	3273	8018	Yes X No __
~~20~~	Nickelson #1	0392	8001	Yes X No __
~~21~~	Walter #1-11	2776	8014	Yes X No __
~~23~~	Whittenburg #1,	2555	8009	Yes X No __
	Finnell #2, and	2555	8009	

	Walter #1-19	2555	8009	
32	Staley-Howerton #1-8,	4371	8022	Yes ___ No X
	Hart #1-6,	4371	8022	
	Clear-Ferguson #1-25,	4371	8022	
	Smith #1-21, and	4371	8022	
	Stevens #1-7	4371	8022	
37	Strecker #1	0259	8024	Yes ___ No X
39	Bergner #1-21, and	2243/4641	8006	Yes ___ No X
	Mast #1-16	2243/4810	8007	
44	Campbell-Webb			
	#1-28 (ENR)	3221	8017	Yes X No ___
	Brewer #1-26, and	3221	8017	
	Brewer #2-27	3221	8017	
47	Clark #1-33	0868/4984	Plaintiff's Exhibit 38	Yes ___ No X

Dyco's Claim for Breach of Contract After June 1, 1985:

Interrogatory No. 3: Force Majeure

On all claims for breach of contract after June 1, 1985 ANR asserts the affirmative defense of "force majeure". Under this defense it is claimed that following ANR's declaration of force majeure, effective June 1, 1985, ANR was rendered unable, wholly or in part to perform or comply with the contract obligations of each gas purchase contract.

(a) Do you find, from a preponderance of the evidence, that ANR was rendered unable wholly or in part to take its system-wide contract obligation of gas purchases from its contract producers due to the event of force majeure (that is, the failure

of ANR's customers to take gas which was excused by Federal Energy Regulatory Commission Order 380)?

Yes X No _____

(Only if your unanimous verdict is (a) yes, please proceed to determine the period of time from June 1, 1985 ANR was unable to take gas due to force majeure.)

(a) We the jury having determined that ANR properly invoked force majeure, we find by a preponderance of the evidence that the condition of force majeure existed through the following stated time period: (Answer either (1) or (2) below.)

(1) The condition of force majeure ceased on the month and year of _____.

(2) The condition of force majeure is still on-going to this present date. Yes X No _____.

(If you find that the condition of force majeure has ceased at any time prior to this current date, so indicate above by asserting the month and year in answer (1). If, on the other hand, you find that the condition of force majeure is still on-going, so indicate above in answer (2).)

Interrogatory No. 4 Commercial Impracticability

On all claims for breach of contract after June 1, 1985 ANR asserts the affirmative defense of "commercial impracticability". Under this defense ANR claims it was excused from performance of the contracts due to

commercial impracticability, as defined by these instructions.

(a) Do you find, from a preponderance of the evidence, that ANR has proved its affirmative defense of commercial impracticability and that it was properly invoked as of June 1, 1985.

Yes X No ____

(Please check your unanimous verdict.)

Interrogatory No. 5. Effect of Force Majeure

You have been instructed that the quantity provisions in all but five of the contracts provide that when deliveries or takes are affected by force majeure and the volume of gas delivered is less than the otherwise applicable DCQ, then the DCQ is deemed to be the volume actually delivered.

In other words, if a party is in force majeure, there is no obligation to take or pay for more than is actually delivered.

Contract Nos. 3, 9, 15, 20, and 37 do not contain a specific quantity provision that is referred to above; therefore, do you find that a usage of trade has been established, from a preponderance of the evidence, which would excuse ANR from both its obligation to take and its obligation to pay under these contracts?

Yes X No ____

(Please check your unanimous verdict.)

(Foreperson)

2-15-90
(Date)

86-C-1097-C

ENTERED ON DOCKET
DATE MAR 5 1993

FILED
MAR 04 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:	
MID-AMERICAS PROCESS SERVICES, INC.,	Case No. 91-01254-C
Debtor.	
IN RE:	
MID-AMERICA MACHINERY ASSOCIATION, INC.,	Case No. 91-01294-C
Debtor.	
IN RE:	
MAPS INTERNATIONAL, INC.,	Case No. 91-01296-C
Debtor.	
IN RE:	
LINDELL M. WHITEFIELD and DELIA ALICIA WHITEFIELD,	Case No. 91-00609-C
Debtors.	
GLEN W. TAYLOR, TRUSTEE, and LINDELL M. WHITEFIELD and DELIA ALICIA WHITEFIELD,	
Plaintiffs,	
v.	Adv. Pro. No. 91-0210-C
RICK E. SALYER and SHERYL D. SALYER,	
Defendants.	**District Court No. 91-C-697-E**

ORDER OF DISMISSAL

THIS MATTER having come on to be heard this 4th day of March, 1993, upon Motion to Dismiss, the Court finds that the case should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the action is hereby dismissed with prejudice.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HARPER SECURITY SYSTEMS, INC. an Oklahoma corporation and HARPER SECURITY PATROL,	)	
Plaintiffs/Counterclaim Defendants,	)	
v.	)	
UNITED STATES OF AMERICA,	)	
Defendant/Counterclaim Plaintiff,	)	Civil No. 90-C-941E
v.	)	
DAVID HARPER d/b/a HARPER SECURITY PATROL,	)	
Additional Defendant Upon The Counterclaim.	)	

FILED
MAR - 4 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE MAR 5 1993

STIPULATION FOR DISMISSAL

It is hereby stipulated and agreed that the above-referenced tax refund action against the United States and related counterclaim of the United States for unpaid employment taxes be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of litigation.

ATTORNEYS FOR HARPER SECURITY SYSTEMS, INC. & DAVID HARPER d/b/a HARPER SECURITY PATROL

DALE JOSEPH GILSINGER
Albright & Gilsinger
2601 Fourth National Bank Bldg.
15 West Sixth Street
Tulsa, OK 74119
(918) 583-5800

ATTORNEYS FOR UNITED STATES

J. JOSEPH RAYMOND
Tax Division
Department of Justice
P.O. Box 7238
Washington, D.C. 20044
(202) 514-6501

ENTERED ON DOCKET
DATE MAR 0 3 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SAC AND FOX NATION,

Plaintiff,

vs.

THE HONORABLE ORVAN J. HANSON, JR. Associate District Judge, Ottawa County, Oklahoma, and THE DISTRICT COURT FOR THE THIRTEENTH JUDICIAL DISTRICT, Ottawa County, Oklahoma, RONALD FIXICO, MERLE BOYD, BRUCE WILLINGHAM, JACK THORPE, TOM GRAY, and JAMES BRANUM,

Defendants.

No. 92-C-645-B

FILED
MAR 02 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

J U D G M E N T

In accordance with the Court's Order Overruling the Plaintiff's Motion for Summary Judgment, and Sustaining the Motions for Summary Judgment of the Defendants, Bruce Willingham and Tom Gray, Judgment is hereby entered in favor of the Defendants denying the Plaintiff Sac and Fox Nation's request to enjoin the District Court of Ottawa County, State of Oklahoma, from entertaining state court jurisdiction over Plaintiff in the case of Dorothy Johnston, et al., v. Ronald Fixico, et al., No. C-91-131, and Plaintiff's action is hereby dismissed. Costs are hereby assessed against the Plaintiff if timely applied for pursuant to Local Rule 6, and the parties are directed to pay their own respective attorneys fees.

DATED this 1st day of March, 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

36

ENTERED ON DOCKET
DATE MAR 0 3 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SAC AND FOX NATION,

Plaintiff,

vs.

No. 92-C-645-B

THE HONORABLE ORVAN J. HANSON, JR. Associate District Judge, Ottawa County, Oklahoma, and THE DISTRICT COURT FOR THE THIRTEENTH JUDICIAL DISTRICT, Ottawa County, Oklahoma, RONALD FIXICO, MERLE BOYD, BRUCE WILLINGHAM, JACK THORPE, TOM GRAY, and JAMES BRANUM,

Defendants.

FILED
MAR 02 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

O R D E R

Before the Court for decision is Plaintiff's Motion for Summary Judgment and the Motion for Summary Judgment of the Defendants, Tom Gray and Bruce Willingham. Herein, the Sac and Fox Nation ("Nation") seeks to enjoin the District Court of Ottawa County, State of Oklahoma, from entertaining state court jurisdiction over the Nation in the case of Dorothy Johnston, et al v. Ronald Fixico, et al., Case No. C-91-131, from conducting proceedings therein, and to enjoin the individual Defendants from conducting proceedings, enforcing orders, or proceeding against the Nation and its officers or agents in said case. The theory of Plaintiff's requested injunction is that the Nation and its officers or employees are a duly authorized Indian tribe, granted sovereign immunity by the United States, and the activity that is the subject of the state court action was being conducted on Indian Country. Following consideration of the record before the Court,

and pursuant to Fed.R.Civ.P. 56, the Court concludes the Plaintiff's Motion for Summary Judgment should be OVERRULED and Plaintiff denied its requested injunction, and the Motion for Summary Judgment of said Defendants is SUSTAINED to the extent of overruling the Nation's request for injunction and for the reasons stated said District Court of Ottawa County, State of Oklahoma action is permitted to proceed against the Plaintiff, Sac and Fox Nation.

The uncontroverted facts are as follows:

1. The Sac and Fox Nation is a federally recognized tribe, band or nation of Indians residing in Oklahoma with a constitution duly approved by the Secretary of the Interior pursuant to the Oklahoma Indian Welfare Act of June 26, 1936, and duly ratified by the members of the Nation. (Complaint, ¶1).

2. The Defendant, The Honorable Orvan J. Hanson, Jr., is a District Court judge in the County of Ottawa, State of Oklahoma. (Complaint, ¶2).

3. The Defendants, Ronald Fixico, Merle Boyd, Bruce Willingham, Jack Thorpe, Tom Gray, and James Branum, are citizens of the State of Oklahoma, and were at one time officers or directors of the Sac and Fox Industrial Development Commission ("Commission"). (Complaint, ¶3).

4. During 1990, certain persons commenced litigation against the Commission in the Ottawa County District Court, in the State of Oklahoma, Case No. C-90-393, entitled Dorothy Johnston, et al., v. Sac and Fox Industries, Ltd., et al. (Complaint, ¶6).

5. A default judgment for money damages has been entered in Case No. C-90-393, against the Commission. (Complaint, ¶7).

6. Plaintiffs in Case No. C-90-393 subsequently filed another suit against certain individual officers and directors (past and/or present) of the Commission in Ottawa County District Court, in the State of Oklahoma, Case No. C-91-131, entitled Dorothy Johnson, et al. v. Ronald Fixico, et al., i.e., the state action. (Complaint, ¶¶ 8, 9).

7. After being sued individually in the state action, the Defendants, Bruce Willingham, Tom Gray and James Branum, filed third-party suits against the Nation. (Complaint, ¶ 10).

8. The Nation objected to being sued in the state action on sovereign immunity and other grounds and filed a motion to dismiss which was overruled by the state court. (Complaint, ¶¶ 12 and 13).

9. The order overruling the Nation's motion to dismiss in the state action requires the Nation to appear in the state court as a third-party defendant in said action and proceed to trial or other disposition. (Complaint, ¶ 14).

10. The principal place at which the state court civil actions arose is 401 East Commerce Street, Commerce, Ottawa County, Oklahoma. (Paragraph 3, Affidavit page 2, Appendix A to Defendant Tom Gray's Brief in Support of Motion to Dismiss).

11. The principal place at which the state action arose is not part of the Nation's reservation. (Complaint, ¶¶ 9, 10 and 17).

12. The site on which the Commerce, Oklahoma plant is situated was a part of the allotment of Ada A. Newman, an Indian of the Quapaw Tribe (Ex. 1, Deft. Motion for Summary Judgment), who duly applied for and received an "Order for the Removal of Restrictions" from the United States Department of the Interior, filed of record October 22, 1909 (Ex. 2, Deft. Motion for Summary Judgment), and was thereafter and under three separate deeds dated December 27, 1909 (Ex. 3, Deft. Motion for Summary Judgment), December 20, 1910 (Ex. 4, Deft. Motion for Summary Judgment), and January 8, 1912 (Ex. 5, Deft. Motion for Summary Judgment), covering 120 acres in the aggregate, conveyed to James F. Robinson, to Moody R. Tidwell, and to J. F. Robinson, C. M. Harvey, G. L. Coleman and A. E. Coleman, respectively, which individuals later formed Commerce Mining and Royalty Company and platted said acreage into lots within 46 blocks which were sold to the general public (and which said acreage was on March 26, 1915 platted as Commerce, Oklahoma (Ex. 6, Deft. Motion for Summary Judgment), including the predecessors in title to the Commission's Commerce, Oklahoma plant site, i.e., Commerce Industrial Development Corporation (Virginia Lee Heydt, president, and Francis E. Heydt, secretary), which obtained title (Ex. 7, Deft. Motion for Summary Judgment), and thereafter contracted the same to the Commission under date of July 19, 1989, under a certain Purchase Agreement which also included a second plant site in Idabel, Oklahoma (Ex. 8, Deft. Motion for Summary Judgment).

13. The Nation through enactment of its Public Law No. SF-84-05, previously created the Sac and Fox Industrial Development Commission, a/k/a Sac and Fox Industries, Ltd. ("Commission"), which undertook certain off-reservation commercial activities for the manufacture and delivery of some 490,915 units of chemical protective suits under a certain defense procurement contract No. DLA 100-89-C-0378, awarded March 10, 1989, by the Defense Personnel Support Center of the Defense Logistics Agency of the United States Army, utilizing, among other locations and facilities, a plant site owned by and contracted from Commerce Industrial Development Corporation (a non-Indian owned Oklahoma corporation), at 401 East Commerce Street, Commerce, Oklahoma, and employed various persons for manufacture and production of said suits, some of which were Indian members of the Nation and some of which were non-Indian.

Subsequent thereto, 90 to 100 former employees of the Commission's Commerce, Oklahoma plant brought an action in the District Court of Ottawa County, Oklahoma, against the Commission for unpaid wages and money damages for work performed thereat as provided in uncontroverted Facts 4 and 5, above. Said former employees of Commission's Commerce, Oklahoma plant also brought another civil action in the Ottawa County, State of Oklahoma District Court referred to in paragraphs 6, 7, 8 and 9.

The Standard of Fed.R.Civ.P. 56 Motion for Summary Judgment

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter

of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Windon Third Oil & Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

> "The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986). The evidence and inferences therefrom must be viewed in a light most favorable to the nonmoving party. Conaway v. Smith, 853 F.2d 789, 792 n. 4 (10th Cir. 1988). Unless the Defendants can demonstrate their entitlement beyond a reasonable doubt, summary judgment must be denied. Norton v. Liddel, 620 F.2d 1375, 1381 (10th Cir. 1980).

A recent Tenth Circuit Court of Appeals decision in Committee for the First Amendment v. Campbell, 962 F.2d 1517 (10th Cir. 1992), concerning summary judgment states:

> "Summary judgment is appropriate if 'there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.' . . . Factual disputes about immaterial matters are irrelevant to a summary judgment determination. . . We view the evidence in a light most favorable to the nonmovant; however, it is not enough that the nonmovant's evidence be 'merely colorable' or anything

short of 'significantly probative.' . . .

"A movant is not required to provide evidence negating an opponent's claim. . . . Rather, the burden is on the nonmovant, who 'must present affirmative evidence in order to defeat a properly supported motion for summary judgment.' . . . After the nonmovant has had a full opportunity to conduct discovery, this burden falls on the nonmovant even though the evidence probably is in possession of the movant. (citations omitted). *Id.* at 1521."

Legal Analysis and Conclusion:

The principal issues presented by the uncontroverted facts herein are whether the Nation is entitled to assert sovereign immunity concerning the business activity that gave rise to the Ottawa County, Oklahoma litigation and whether the Commerce, Oklahoma plant is located in "Indian Country" within the operation of federal law.

In determining the issue of sovereign immunity, the Court must distinguish between those inherent powers retained by the tribe and those divested which involve relations between the tribe and nonmembers of the tribe and external relations. Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148, 36 L.Ed.2d 114, 119, 93 S.Ct. 1267 (1973); Montana v. U. S., 450 U.S. 544, 564-565, 67 L.Ed.2d 493, 509-510, 101 S.Ct. 1245 (1981); and Brendale v. Confederated Yakima Nation, 492 U.S. 408, 106 L.Ed.2d 343, 101 S.Ct. 2994, *reh'g denied,* 492 U.S. 937, 106 L.Ed.2d 635, 110 S.Ct. 22 (1989). Said authority supports the conclusion that the Sac and Fox Nation is not entitled to assert sovereign immunity in the Ottawa County, State of Oklahoma action because the subject matter and alleged

chose in action arises from the Nation's engaging in "external relations."

Further, the plant site in Commerce, Oklahoma does not come within the definition of "Indian Country." 18 U.S.C. § 1151, and Oklahoma Tax Comm. v. Potawatomi Tribe, 498 U.S. _____, 112 L.Ed.2d 1112 at 1121 (1991), quoting United States v. John, 437 U.S. 634, 648-49 (1978).

For the reasons above stated, the Motion for Summary Judgment of the Plaintiff, Sac and Fox Nation, is hereby OVERRULED, and the Motion for Summary Judgment of the Defendants, Bruce Willingham and Tom Gray, is hereby SUSTAINED. A separate Judgment in keeping with the Court's order herein shall be filed contemporaneously.

DATED this 1st day of March, 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED
MAR 02 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT J. SODEN, a/k/a BOB SODEN, Plaintiff, vs. STATE FARM GENERAL INSURANCE COMPANY and STATE FARM FIRE AND CASUALTY COMPANY, foreign corporations, Defendants.	Case No. 92-C-251-B

JOURNAL ENTRY OF JUDGMENT

NOW on this 23rd day of February, 1993, the above-captioned case comes on for hearing before me, the undersigned Judge of the United States District Court for the Northern District of Oklahoma. Plaintiff appears by and through his attorney of record, Kevin Schoeppel. The Defendant appears by and through its attorney of record, Ann E. Allison of the law firm of Thomas, Glass, Atkinson, Haskins, Nellis & Boudreaux, Tulsa, Oklahoma.

On February 22, 1993, a jury was empaneled. Thereafter, a stipulation and agreement of the parties was reached whereby the Plaintiff conceded that a material misrepresentation was made in the State Farm rental dwelling application for rental insurance on his property located at 766 North Denver, Tulsa, Oklahoma. It is conceded by the Plaintiff that this material misrepresentation defeats and negates coverage pursuant to the Rental Dwelling Policy #G96170545-2, as such policy is rescinded.

It is therefore ordered that the Rental Dwelling Policy #G96170545-2 is rescinded, that the Plaintiff, Robert Soden, take

nothing from the Defendant, State Farm General Insurance Company, and the Defendant, as the prevailing party, have and recover against the Plaintiff its costs and attorney fees if timely applied for pursuant to Rule 6 of the Rules of the United States District Court for the Northern District of Oklahoma.

DATED this 2nd day of March, 1993.

S/ THOMAS R. BRETT

Thomas R. Brett
United States District Judge

APPROVED AS TO FORM AND CONTENT:

Kevin Schoeppel
Attorney for Plaintiff

Ann E. Allison
Attorney for Defendant

379/16/JEOJ.dlg/AEA

ENTERED ON DOCKET
DATE MAR 3 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 2 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MARCUS ELWAYNE PARTEE,

Plaintiff,

vs.

CITY OF TULSA, et al.,

Defendants.

No. 91-C-304-E

JUDGMENT

This action came on for jury trial before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly tried and the jury having rendered its verdict,

IT IS THEREFORE ORDERED that the Plaintiff take nothing from the Defendants, that the action be dismissed on the merits, and that the Defendants recover of the Plaintiff their costs of this action.

ORDERED this 2d day of March, 1993.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 2 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

WILLIAM BEN JOHNSON, an Individual; and TULSA DENTAL PRODUCTS LIMITED PARTNERSHIP, an Oklahoma Limited Partnership,

Plaintiffs,

v.

DEREK HEATH, an Individual; and QUALITY DENTAL PRODUCTS, INC., a Tennessee Corporation,

Defendants.

Case No. 92-C-334 E

ENTERED ON DOCKET
DATE MAR 3 1993

JOINT STIPULATION OF DISMISSAL WITHOUT PREJUDICE

The parties, William Ben Johnson, Tulsa Dental Products Limited Partnership, Derek Heath, and Quality Dental Products, Inc., through their respective attorneys and under Rule 41(a) of the Federal Rules of Civil Procedure, jointly stipulate to the dismissal of this action without prejudice.

Dated: ~~February~~ March 1, 1993.

Respectfully submitted,

J. Douglas Mann, OBA #5663
Jerry L. Zimmerman, OBA #10003
Mark S. Rains, OBA #10935

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Attorneys for William Ben Johnson and Tulsa Dental Products Limited Partnership

and

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Attorneys for Defendants, Derek Heath and Quality Dental Products, Inc.

DATE MAR 0 3 1993
FILED
MAR 02 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

DARLENE L. SNIDER,

Plaintiff

v.

LOUIS W. SULLIVAN, M.D., SECRETARY OF HEALTH AND HUMAN SERVICES,

Defendant

91-C-485-B

ORDER

This court has for its consideration the objection of the Plaintiff, Darlene Snider ("Snider"), to the Findings and Recommendations of the United States Magistrate Judge who affirmed the Administrative Law Judge's (hereinafter "ALJ") denial of disability insurance benefits.

Snider filed this judicial review action pursuant to 42 U.S.C. §405(g) challenging the final decision of the Secretary of Health and Human Services. The matter was referred to the United States Magistrate who entered his Report and Recommendation on December 3, 1992. The Magistrate Judge concluded there was substantial evidence in the record to support the Secretary's final decision that Snider is not disabled within the meaning of the Social Security Act, and thus affirmed the Secretary's decision. 42 U.S.C.A. §423.

A review of the record and the medical evidence presented indicates that Snider suffers from asthma and diabetes mellitus which are controlled by medication. Additionally, various physicians have diagnosed Snider with chronic lumbar strain, somatic dysfunction, obesity and menopausal syndrome. (TR 10-14,

21

228). Dr. Susan Miller determined in Sept. 1988 that Snider was "unable to perform a job that requires sitting, standing, walking or bending...and that plaintiff should not work in an environment with any chemicals, strong odors or particulate matters." (TR 154).

Dr. E. Joseph Sutton examined the Plaintiff on February 24, 1989, and found that "[i]n spite of the patient stating that her hands and feet were swollen, there was no evidence of pitting edema, and all of the patient's complaints of edema appeared subjective..." (TR 158). He reported that she got on and off the examination table without difficulty, that her gait was normal regarding speed, stability, and safety and that she had no difficulty with gross and fine motor manipulation. (TR 158). Dr. Sutton concluded that "the patient's symptoms were quite subjective" and "she has no evidence of any type of pulmonary deficit at the present time." (TR 158). Dr. Sutton also noted that Snider told him she likes to sew and to operate her computer. (TR 157).

Dr. J. D. Mayfield supervised pulmonary function studies of Plaintiff on March 31, 1989, and found only a "minimal obstructive lung defect." (TR 166). Progress notes from the Oklahoma College of Osteopathic Medicine from 1988 to 1989 show that when Plaintiff was noncompliant with her medical and dietary regimen, her blood sugar would rise and fall. (TR 1799-190, 208-210, 231-241). So as to avoid insulin usage, she was counseled about the importance of dietary compliance. (TR 179). On September 7, 1988, Snider's non-insulin diabetes was found to be "well-controlled." (TR 185).

The Social Security Act entitles every individual who "is under a disability" to a disability insurance benefit. 42 U.S.C.A. §423(a)(1)(D)(1983). "Disability" is defined as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment." Id. at §423(d)(1)(A). An individual

> "shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work."

Id. at §423(d)(2)(A).

Under the Social Security Act the plaintiff bears the burden of proving a disability, as defined by the Act, which prevents him from engaging in his prior work activity. Reyes v. Bowen, 845 F.2d 242, 243 (10th Cir. 1988); 42 U.S.C. §423(d)(5) (1983). Once the plaintiff has established such a disability, the burden shifts to the Secretary to show that the claimant retains the ability to do other work activity and that jobs exist in the national economy which plaintiff could perform. Reyes, 845 F.2d at 243; Williams v. Bowen, 844 F.2d 748, 751 (10th Cir. 1988); Harris v. Secretary of Health and Human Services, 821 F.2d 541, 544-45 (10th Cir. 1987).

The Secretary meets this burden if the decision is supported by substantial evidence. See, Campbell v. Bowen, 822 F.2d 1518, 1521 (10th Cir. 1987); Brown v. Bowen, 801 F.2d 361, 362 (10th Cir.

1986).

The Secretary has established a five-step process for evaluating a disability claim. See, Bowen v. Yuckert, 482 U.S. 137, 107 S.Ct. 2287, 96 L.Ed.2d 119 (1987). The five steps, as set forth in Reyes v. Bowen, 845 F.2d at 243, proceed as follows:

> (1) A person who is working is not disabled. 20 C.F.R. §416.920(b).
>
> (2) A person who does not have an impairment or combination of impairments severe enough to limit his ability to do basic work activities is not disabled. 20 C.F.R. §416.920(c).
>
> (3) A person whose impairment meets or equals one of the impairments listed in the "Listing of Impairments," 20 C.F.R. § 404, subpt. P, app. 1, is conclusively presumed to be disabled. 20 C.F.R. §416.920(d).
>
> (4) A person who is able to perform work he has done in the past is not disabled. 20 C.F.R. §416.920(e).
>
> (5) A person whose impairment precludes performance of past work is disabled unless the Secretary demonstrates that the person can perform other work available in the national economy. Factors to be considered are age, education, past work experience, and residual functional capacity. 20 C.F.R. §416.920(f).

If at any point in the process the Secretary finds that a person is disabled or not disabled, the review ends. Reyes, 845 F.2d at 243; Talbot v. Heckler, 814 F.2d 1456, 1460 (10th Cir. 1987); 20 C.F.R. §416.920.

In the present case, the ALJ found that Snider did not satisfy the fifth step of the sequential evaluation process. The ALJ determined that in her present medical condition, Plaintiff would be capable of performing various clerical jobs which exist in

Oklahoma. Snider appeals that ruling.

The Secretary must consider, in his evaluation of plaintiff's pain and other subjective complaints, such factors as the regular use of strong pain-killing medication, persistent attempts to find relief, regular contact with a doctor and plaintiff's activities. Luna v. Bowen, 834 F.2d 161, 165-66. Non-medical testimony must be consistent with the medical evidence as to the relative severity of Plaintiff's pain and/or other subjective complaints. Talley v. Sullivan, 908 F.2d 585, 587 (10th Cir. 1990). In his decision, the ALJ considered Snider's activities, testimony[1] and medical evidence of record. (TR 12-14). Additionally, he considered the various medical testimony regarding the relative severity of Plaintiff's pain and found that the non-medical testimony was not consistent with the medical evidence.

The record clearly indicates that Snider's back pain complaints are subjective and are not supported by objective medical evidence. She has had asthma since age three, and her diabetes medication causes no debilitating side effects. Plaintiff's broad work history includes work as an office manager, school cook, clinic receptionist, welfare provider, and owner/operator of a day care center.

Snider asserts that the ALJ did not utilize the vocational expert properly because he did not pose a complete hypothetical

[1] In reference to Plaintiff's subjective pain, the ALJ also considered Plaintiff's daily diary where she made regular entries regarding her pain, medication, limitations and activities. (TR 250-259) (ALJ Decision pp.13-14).

question to the witness. Plaintiff claims that the hypothetical question should have included additional impairments of the Plaintiff. She relies on Hargis v. Sullivan where the court held that "testimony elicited by hypothetical questions that do not relate with precision all of a claimant's impairments cannot constitute substantial evidence to support the Secretary's decision." 945 F.2d 1482 (10th Cir. 1991). Snider's reliance on Hargis is misplaced.

In Hargis, the ALJ failed to include claimant's mental impairments in the hypothetical question which were supported by substantial medical evidence of record. Id. at 1488. Such is not the situation in the case at bar where the ALJ excluded impairments which were not supported by substantial medical evidence.

The ALJ's hypothetical question incorporated all the restrictions found by the physicians in the medical record and the medical evidence. Although Snider complains of other impairments, the evidence shows that those ailments are subjective. The medical evidence does not contain clinical findings or laboratory tests which support Plaintiff's allegations of disabling pain. Because the ALJ properly excluded any unsupported subjective ailments from the hypothetical question, the question was not incomplete.[2]

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[2] The hypothetical question asked by the ALJ was as follows:

> Q Let me ask you a hypothetical question. Let me have you assume that we have a hypothetical person, the same age, education, experience, sex, background, and so forth as this claimant. Who is capable of performing a full range of sedentary and light work, limited by needing to be able to alternately sit and stand as needed, without excessive walking, without excessive standing, without excessive bending, stooping, squatting. No polluted air and no extreme heat or humidity. Are there a significant number of jobs, either in the region

Plaintiff's second claim contends that the vocational expert relied on "Occu-Data" to determine that substantial numbers of clerical jobs exist in the state and that "Occu-Data" is not a reliable source recognized by the Social Security Administration.[3] This claim also lacks merit.

The Secretary may take notice of any "reliable job information available from various governmental and other publications" to establish the existence of jobs in the plaintiff's region. 20 C.F.R. §404.1566(d). The language of the statute does not limit administrative notice to only the five sources cited in the statute. The statute lists those sources as "examples" and states that "other publications" may be relied upon as well. Id.

Additionally, the regulations permit the Secretary to utilize the services of a vocational expert to resolve complex vocational issues. 20 C.F.R. §416.966(e)(1991). "The expert is only required to state his opinion as to the number of jobs available in the national economy." Whitehouse v. Sullivan, 949 F.2d 1005, 1007 (8th Cir. 1991).

The regulations place no restrictions on an expert's opinion as long as it is based on reliable job information which an expert

---

where the claimant lives or the several regions of the national economy that such a hypothetical person could reasonably be expected to perform? (TR 80).

[3] Plaintiff refers to 20 C.F.R. §404.1566(d) which states: "...we will take administrative notice of reliable job information available from various governmental and other publications. For example, we will take notice of (1) Dictionary of Occupational Titles, published by the Department of Labor; (2) Country Business Patterns, published by the Bureau of the Census; (3) Census Reports, also published by the Bureau of the Census; (4) Occupational Analyses, prepared for the Social Security Administration by various state employment agencies and (5) Occupational Outlook Handbook, published by the Bureau of Labor Statistics..."

in the field would normally consider. 20 C.F.R. §416.966. The vocational expert testified that "Occu-Data is a private organization in Missouri that publishes information specifically designed to assist vocational experts and consultants." (TR 84). The Secretary will take notice of reliable job information when determining that unskilled, sedentary, light and medium jobs exist in the national economy. 20 C.F.R. §404.1566(d). Because he relied on job information published in a source upon which experts in the field rely, the vocational expert's testimony is valid, and the Secretary's reliance upon such testimony was not improper.

In reaching his decision, the ALJ considered upon medical evidence, the plaintiff's testimony and opinions of a medical expert and vocational expert. After evaluating the evidence, the ALJ determined that neither the objective medical evidence nor the testimony of the plaintiff established that plaintiff's ability to function was severely impaired so as to preclude all types of work activity. If supported by substantial evidence, the Secretary's findings are deemed conclusive and must be affirmed. Richardson v. Perales, 402 U.S. 389, 390 (1971). "Substantial evidence" requires "more than a scintilla, but less than a preponderance" and is satisfied by such relevant "evidence that a reasonable mind might accept to support the conclusion." Campbell v. Bowen, 822 F.2d at 1521; Brown, 801 F.2d at 362. The determination of whether substantial evidence supports the Secretary's decision, however,

> "is not merely a quantitative exercise. Evidence is not substantial 'if it is overwhelmed by other evidence--particularly certain types of evidence (e.g., that offered

> by treating physicians)--or if it really constitutes not evidence but mere conclusion.'"

Fulton v. Heckler, 760 F.2d 1052, 1055 (10th Cir. 1985) (quoting Knipe v. Heckler, 755 F.2d 141, 145 (10th Cir. 1985). Thus, if the plaintiff establishes a disability, the Secretary's denial of disability benefits, based on the plaintiff's ability to do other work activity for which jobs in the national economy exist, must be supported by substantial evidence. "The court's sole function is to determine whether the record as a whole contains substantial evidence to support the Secretary's decisions." 42 U.S.C. §405(g).

A review of the ALJ's treatment of Snider's overall claim for benefits, including testimony from Snider, a vocational expert and medical experts, reveals that he considered the entire record before concluding that Snider was not disabled within the meaning of the Social Security Act. The decision of the ALJ is supported by substantial evidence and is a result of a proper application of the applicable regulations.

The Court, therefore, agrees with and adopts the Report and Recommendation of the Magistrate finding that substantial evidence supports the denial of disability insurance benefits to Plaintiff. The Court concludes that the Secretary's decision should be and the same is hereby AFFIRMED.

IT IS SO ORDERED this 2nd day of ~~February,~~ Mar., 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE MAR 2 1993

IN RE:

REPUBLIC TRUST & SAVINGS COMPANY, an Oklahoma trust company, also d/b/a Western Trust and Savings Company,

Debtor.

R. DOBIE LANGENKAMP, Successor Trustee,

Plaintiff,

vs.

LOUIS H. FRITS and GENEVA FRITS,

Defendants.

Case No. 84-01461-W
(Chapter 11)

FILED
MAR 1 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Adversary No. 85-0318-C

Dist. Ct. No. 92-C-614-E

O R D E R

Comes now before the Court for its consideration, pursuant to Rule 41(a)(1)(ii) Fed.R.Civ.Proc., a Stipulation of Dismissal of the above appeal. After review of the record, the Court finds that said stipulation of dismissal should be granted.

IT IS THEREFORE ORDERED that said Stipulation of Dismissal is hereby GRANTED.

ORDERED this 1st day of March, 1993.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
DATE MAR 2 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TERRY ARTHER LUNSFORD,

Petitioner,

vs.

JACK COWLEY, et al.,

Respondents.

No. 93-C-147-B

FILED
MAR 1 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Petitioner has filed an application for a writ of habeas corpus, but has not submitted the proper filing fee or a motion for leave to proceed in forma pauperis. See Local Rule 6(A). In addition, upon review of the petition, the court finds that this district does not have jurisdiction to entertain Petitioner's application. See 28 U.S.C. § 2241(d). Therefore, this action is hereby dismissed without prejudice.

SO ORDERED THIS 1ST day of Mar., 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
DATE MAR 2 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 1 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

GARY L. CHILDERS,

Petitioner,

vs.

STATE OF OKLAHOMA, et al.,

Respondents.

No. 93-C-136-B

ORDER

Now before the court is Gary L. Childers' petition for a writ of habeas corpus. Childers' petition contains several defects. First, his petition is not on the proper court-authorized petition for a writ of habeas corpus form. In addition, the alleged basis for relief of Childers' petition is inordinate delay regarding his state direct appeal. However, Childers' petition reveals that his appeal was eventually decided and his conviction was affirmed. Thus, his claim regarding delay is moot.

Thus, for all the above reasons, Childers' petition for a writ of habeas corpus is hereby dismissed without prejudice.

SO ORDERED THIS 1st day of March, 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT COURT

7

ENTERED ON DOCKET
DATE MAR 2 1993

FILED
MAR 1 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAMES NAPOLEON, JR., Plaintiff,

vs.

OKLAHOMA CHILDREN'S MEMORIAL HOSPITAL, et al., Defendants.

No. 93-C-138-B

O R D E R

Now before the court is Plaintiff's motion for leave to proceed in forma pauperis and civil rights complaint pursuant to 42 U.S.C. § 1983 and § 1985(3). Plaintiff's motion for leave to proceed in forma pauperis is hereby granted.

Upon review of the complaint, it appears to the court that proper venue does not lie in this district, and Plaintiff's case should be dismissed. See 28 U.S.C. § 1391(b); 28 U.S.C. § 1406(a). In addition, the court notes that the instant complaint is grossly insufficient and frivolous, as it fails to allege any facts.

Therefore, Plaintiff's complaint is hereby dismissed.

IT IS SO ORDERED this 1st day of Mar., 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT COURT

-5

ENTERED ON DOCKET

DATE 3-2-93

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

FEB 26 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

THOMAS R. SLIGAR,)
)
Plaintiff,)
)
v.) 92-C-589-B
)
RON CHAMPION, ET AL,)
)
Defendants.)

AMENDED ORDER

Pro se Plaintiff Thomas Sligar, an inmate at the Dick Connor Correctional Center ("DCCC"), sued Ron Champion, Warden of the Dick Connor Correctional Center, under 42 U.S.C. § 1983 (1982) alleging violations of his First and Fourteenth Amendment Rights.

Specifically, Plaintiff alleges the following civil rights violations were committed by the Defendant: (1) Denial of the right to practice his religion; (2) Denial of the right to free exercise of his religion without fear of disciplinary action; and (3) Denial of his right to Due Process by the formation of a committee to judge his religious sincerity.

For the reasons set forth below, the Court finds that Plaintiff's action is frivolous under 28 U.S.C. §1915(d) since he cannot make a rational argument on the law or the facts to support his claim. Therefore, the Plaintiff's Complaint is DISMISSED. [1]

[1] *The defendant argues that this case should be dismissed due to plaintiff's failure to exhaust state remedies. Case law indicates that in failure to exhaust situations, this Court should grant a 90-day continuation to allow plaintiff to exhaust his remedies. See McKart v. United States, 395 U.S. 185, 89 S.Ct. 1657 (1969); Rocky v. Vittorie, 813 F.2d 734 (5th Cir. 1987); Patsy v. Board of Regents of State of Florida, 457 U.S. 496, 102 S.Ct. 2557, 73 L.Ed.2d 172 (1982). However, in this case, this Court finds that a continuation would be futile since the facts indicate a frivolous claim, better dealt with under 28 U.S.C. 1915(d).*

11

I. Summary of Facts

Plaintiff is an inmate at the Dick Connor Correctional Center in Hominy, Oklahoma.[2] On July 9, 1992, Plaintiff filed a Civil Rights Complaint pursuant to 42 U.S.C. §1983 and a Motion for Leave to Proceed In Forma Pauperis and Supporting Declaration. Defendant responded with a Motion to Stay Proceedings and Request for Order Requiring Special Report. Such request was granted by this Court's Order Facilitating §1915(d) (Frivolity) Review. The Special Report was filed along with the defendant's Motion to Dismiss on September 28, 1992.[3] Plaintiff filed his Response to Defendant's Motion to Dismiss on November 18, 1992.

II. Legal Analysis

The initial question is whether or not Plaintiff's Complaint is frivolous. "The court . . . may dismiss [an in forma pauperis] case . . . if satisfied that the action is frivolous or malicious." 28 U.S.C. § 1915(d) (1982). Furthermore, an in forma pauperis case is deemed to be frivolous if

> . . . the Plaintiff cannot make a rational argument on the law or on the facts to support his claim, and that this determination may be made on the basis of an administrative report.[4] *Phillips v. Carey*, 638 F.2d 207 (10th Cir. 1981).

---

[2] *Plaintiff was convicted of three counts of assault and battery of a police officer and one count of false impersonation. He is serving a 40-year sentence.*

[3] *The Report of Review of Factual Basis of Claims Asserted in Civil rights Complaint Pursuant to U.S.C. § 1983 included several attachments. These included: (1) copy of the Application and review Procedures for Exemption to the DCCC Inmate Grooming Code, (2) copy of the Practice of Religion by Inmates, (3) affidavit by Marvin Keenan, chaplain at the DCCC, (4) copy of plaintiff's Grooming Code Request dated July 10, 1992, (4) copy of plaintiff's civil rights complaint filed in this action, (5) copy of plaintiff's consolidated record card indicating plaintiff's religion as Baptist, and (6) copy of a memorandum to Randy Cook, Deputy Warden at DCCC, dated August 14, 1992, indicating that plaintiff still had not submitted an essay for his grooming code request.*

[4] *This administrative report is commonly known as a Martinez report. These reports are intended to provide information for the district court which will enable it to decide preliminary matters, . . . especially in §1983 actions. Martinez v. Aaron, 570 F.2d 317 (10th Cir. 1978).*

In order to state a claim under §1983, a Plaintiff must allege facts demonstrating two elements:

> First, Plaintiff must prove that the defendant has deprived him of a right secured by the Constitution and laws of the United States.
>
> Second, Plaintiff must show that the defendant deprived him of this constitutional right "under color of any statute, ordinance, regulation, custom or usage of any State or Territory. *Meade v. Grubbs*, 841 F.2d 1512, 1526 (10th Cir. 1988) citing to *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150, 90 S.Ct. 1598.

Plaintiff alleges that his Constitutional right to freely exercise his religion is being violated by DCCC's Grooming Code. In *Turner v. Safely, 482 U.S. 78, 107 S.Ct. 2254, 2261, 96 L.Ed.2d 64 (1987)*, the Court stated the general test: "When a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." To determine if DCCC's grooming code regulations are reasonable under *Turner*, this Court must consider: "(1) Whether the regulation has a logical connection to the legitimate governmental interests invoked to justify it; (2) Whether there are alternative means of exercising the rights that remain open to the inmates; (3) The impact that accommodation of the asserted constitutional right will have on other inmates, guards and prison resources; and (4) The presence or absence of ready alternatives that fully accommodate the prisoner's rights at de minimus costs to valid penological interests." *Turner, 482 U.S. at 89-90, 107 S.Ct. at 2262.*

With regard to the first factor, "the governmental objective must be a legitimate and neutral one." *Turner, 482 U.S. at 89, 107 S.Ct at 2262.* "Prison regulations regarding hair length and shaving are rationally related to substantial government interests in maintaining prison security and order. . ." *Fromer v. Scully, 874 F.2d 69, 75 (2nd Cir. 1989).* Thus, there

is a legitimate government interest in a "grooming" code.

The correct inquiry with respect to the second factor is "whether the inmates are deprived of all means of expression." ***O'Lone*** *v. Estate of Shabazz, 482 U.S. 342, 352, 107 S.Ct. 2400, 2406, 96 L.Ed.2d 282 (1987).* "It is appropriate to see whether under these regulations, Plaintiff retains the ability to participate in other religious ceremonies." *Id.* The DCCC Field Manual provides for "access to religious resources, services and/or counseling" in its Practice of Religion by Inmates.[5] Furthermore, Plaintiff has not alleged any other violations committed by DCCC in preventing or inhibiting Plaintiff's free exercise of religion. Consequently, Plaintiff is not being denied all religious activity in violation of the First Amendment.

When determining the impact that accommodation would have on other inmates, guards and prison resources, this Court must be mindful that "accommodation of an asserted right will have a significant 'ripple effect' on fellow inmates or on prison staff, and should be particularly deferential to the informed discretion of the corrections officials." *Turner, 482 U.S. at 90, 107 S.Ct. at 2262.* "Central to all other corrections goals is the institutional consideration of internal security . . ." *Pell v. Procunier, 417 U.S. 817, 823, 94 S.Ct. 2800, 2804, 41 L.Ed.2d 495 (1974).* Grooming patterns are significant security considerations since "a long beard, like long hair, could make identification more difficult and help prisoners hide contraband." ***Dunavant*** *v. Moore, 907 F.2d 77, 79 (8th Cir. 1990).* Thus, without an argument to the contrary from Plaintiff, this Court will defer to DCCC's discretion with regard to grooming requirements.

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[5] *Martinez report, Attachment B.*

The fourth factor requires the Plaintiff "to show that there are obvious, easy alternatives . . ." *Fromer, 874 F.2d at 76 citing Turner, 482 U.S. at 90, 107 S.Ct. at 2262.* "Prison officials do not have to set up and shoot down every conceivable alternative . . . " *Turner, 482 U.S. at 90, 107 S.Ct. at 2262.* Plaintiff has failed to meet his burden since he has not suggested any alternative methods for DCCC to protect their penological interests while granting Plaintiff's grooming code exemption.

Plaintiff, in his Complaint, fails to state any facts in support of his allegations. He simply states that his First Amendment right to freedom of religion is being violated because he is not being allowed to "grow long hair and not shave as did the men of the Bible time."[6] He fails to state the religion that he claims to be worshipping and why compliance with DCCC's grooming code would violate his religious beliefs.

Furthermore, the Martinez report indicates that Plaintiff filed such a request on the same day he filed this action.[7] However, Plaintiff failed to include the necessary written explanation with his request that explained why his religion required a grooming code exemption. As such, Plaintiff has failed to explain to both the grooming code committee at DCCC and to this Court why he is entitled to a grooming code exemption.

In Plaintiff's Response to Defendant's Motion to Dismiss, Plaintiff again fails to allege any facts to support his accusations.[8] As stated in Mitchell v. King, "the Court disregards

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[6] *Complaint at 7.*

[7] *It appears that plaintiff, in a last-minute fashion, was attempting to comply to the rule requiring exhaustion of state remedies before filing a cause of action in this Court.*

[8] *In Plaintiff's Response to Defendant's Motion for Summary Judgment, he states: "This Court's function on a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief might be granted; Miller v. Glanz, 948 F.2d 1562 (10th Cir. 1991). Allegations in the plaintiff's complaint are presumed true; Curtis Ambulance of Florida, Inc. v. Board of County Comm'rs, 811 F.2d 1371 (10th Cir. 1987)." While plaintiff's*

unsupported conclusions." 537 F.2d 385, 386 (10th Cir. 1976). It is well-settled law in the Tenth Circuit that

> . . . bald conclusions, unsupported by allegations of fact, are legally insufficient; and pleadings containing only such conclusory language may be summarily dismissed or stricken without a hearing. *Lorraine v. United States*, 444 F.2d 1 (10th Cir. 1971); ***Atkins*** *v. Kansas*, 386 F.2d 819 (10th Cir. 1967).

Plaintiff's Complaint is frivolous, failing to demonstrate any facts to support Plaintiff's allegations that DCCC is violating his First Amendment rights. Therefore, Plaintiff's Complaint is dismissed as frivolous pursuant to 28 U.S.C. §1915(d).

SO ORDERED THIS 1st day of March, 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

understanding of the law may be correct, he has failed to allege any facts to substantiate his claims. Similarly, plaintiff's Complaint is just as fact deprived as his Response.

ENTERED ON DOCKET
DATE MAR 2 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 1 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CLIMATE CONTROL INSTITUTE OF OKLAHOMA, INC., an Oklahoma corporation, et al.,

Plaintiffs,

vs.

LAMAR ALEXANDER or his successor, SECRETARY OF THE UNITED STATES DEPARTMENT OF EDUCATION, in his official capacity,

Defendant.

No. 93-C-55-E

O R D E R

Comes now before the Court for its consideration Wright of Oklahoma City, Inc., d/b/a Wright Business School, Wright of Kansas City, Inc., d/b/a Wright Business School and San Gabriel Polytechnic institute, d/b/a California Business Institute's Motion to Intervene of Right, In the Alternative, Motion for Permissive Joinder, and in the Alternative, Motion for Permissive Joinder of parties (docket #22) ("Movants' motion to intervene") and Defendant United States Department of Education ("Defendant EDUC") motion to dismiss Movants for improper venue (docket #18).

After review of the record, the Court enters the following Order:

1. **Venue Over Movants:**

The venue provisions of 28 U.S.C. §1391(e) mandates the issue of venue. Movants' attempt to interpret an affirmative statement of additional venue choices in the Higher Education Act and

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assertion that Defendant EDUC has waived venue by failing to brief the issue before the TRO hearing are unpersuasive. The Court finds Movants' supporting case, Yoshida v. Dulles, 116 F.Supp. 618 (D. Hawaii 1953), distinguishable on the facts; here, Defendant EDUC addressed the issue of venue within a reasonable period of time. Accordingly, the Court finds Defendant EDUC's motion to dismiss Movants for improper venue should be GRANTED.

2. **Intervention by Movants:**

In order to intervene as a matter of right, Movants must satisfy the three requirements[1] expounded in Bottums v. Dresser Indus., Inc., 797 F.2d 869 (10th Cir. 1986). Movants have failed to satisfy said requirements; further, the Court finds Movants each would be better served to bring suit on their own behalf.[2] Accordingly, Movants' motion to intervene, in alternative, motion to intervene as a matter of right should be DENIED.

Movants' motion for permissive intervention is premised upon the identical rationale for their motion to intervention as a matter of right. After review, the Court finds permissive intervention by Movants would not negate the venue requirements of

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[1](1) They have an interest relating to the property or transaction which is the subject matter of this action; (2) that the disposition of the action without them will impair their abilities to protect those interests; and (3) that the existing parties may represent movants' interests inadequately. Fed.R.Civ.P. 24(a)(2); Bottums v. Dresser Indus., Inc., 797 F.2d 869, 872 (10th Cir. 1986)(affirming denial of intervention).

[2]Each Movant possesses the right to sue on their own behalf, provided the requirements of 28 U.S.C. §1391(e) are met; in fact, CBI has already filed the same action in the Central District of California.

28 U.S.C. §1391(d), Allen v. Issac, 99 F.R. 45, 57 (N.D. Ill. 1983); therefore, Movants' motion for permissive intervention should be DENIED.

The Court finds Movants' motion for permissive joinder of parties fails to meet the "related transactions or occurrences" requirement. Here, Movants assert their individual cohort default rates possess the requisite connection to each other; however, the Court is unpersuaded and holds that each claim sought to be advanced vary substantially depending upon the party. Therefore, Movants' motion for permissive joinder of parties should be denied.

IT IS THEREFORE ORDERED that Movants' motion to intervene (docket #22) is hereby DENIED; Defendant EDUC's motion to dismiss Movants for improper venue (docket #18) is hereby GRANTED. Accordingly, Movants are dismissed without prejudice from the above-styled cause.

ORDERED this 15th day of March, 1993.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 1 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Clester Bills,

Plaintiff,

v.

Drew Diamond,

Defendant.

Case No. 91-C-303-E

ENTERED ON DOCKET
DATE MAR 2 1993

ORDER

Rule 35(a) of the Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

> *(a) In any case in which no action has been taken by the parties for six (6) months, it shall be the duty of the Clerk to mail notice thereof to counsel of record or to the parties, if their post office addresses are known. If such notice has been given and no action has been taken in the case within thirty (30) days of the date of the notice, an order of dismissal may, in the Court's discretion, be entered.*

In the action herein, notice pursuant to Rule 35(a) was mailed to counsel of record or to the parties, at their last address of record with the Court, on **April 28, 1992**. No action has been taken in the case within thirty (30) days of the date of the notice.

Therefore, it is the Order of the Court that this action is in all respects dismissed.

Dated this 1st day of March, 1993.

United States District Judge

ENTERED ON DOCKET
DATE MAR 2 1993

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

CenTerdor M. Jackson, Petitioner,

vs.

Warden Dan Reynolds, Respondents.

No. 93-C-46-B

FILED
MAR 1 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

O R D E R

Petitioner has paid the $5.00 filing fee to reinstate his application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has also sent a letter to the court stating that he never intended to file his action before this court, intending rather to file it before the United States District Court for the Eastern District of Oklahoma. Indeed, this court does not have jurisdiction to entertain this case, as Petitioner is neither incarcerated in this district, nor was he convicted in this district. See 28 U.S.C. § 2241(d). Therefore, pursuant to Petitioner's wishes, the court shall transfer this case to the United States District Court for the Eastern District of Oklahoma.

IT IS, THEREFORE, HEREBY ORDERED that Petitioner's application for a writ of habeas corpus is transferred to the United States District Court for the Eastern District of Oklahoma for all further proceedings. No further filing fee is necessary.

IT IS SO ORDERED this 1st day of Mar., 1993.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

4

ENTERED ON DOCKET
DATE MAR 1 1993

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MITCHEL S. ZABIENSKI and PATTI ZABIENSKI, Plaintiffs, vs. THE WHITLOCK CORPORATION, a foreign corporation, d/b/a WHITLOCK AUTO SUPPLY, Defendant and Third-Party Plaintiff, vs. ALAMEDA INVESTORS II, LTD., Third-Party Defendant.	)	No. 91-C-720-C

JUDGMENT

This matter came on for consideration of the motion for summary judgment of third-party defendant Alameda Investors II, Ltd. The issues having been duly considered and a decision having been duly rendered in accordance with the Order filed contemporaneously herewith,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby entered for third-party defendant Alameda Investors II, Ltd., and against third-party plaintiff Whitlock Corporation and that third-party plaintiff taking nothing by way of its third-party complaint.

IT IS SO ORDERED this 26th day of February, 1993.

H. DALE COOK
UNITED STATES DISTRICT JUDGE

FILED
FEB 26 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:	
REPUBLIC TRUST & SAVINGS COMPANY, an Oklahoma trust company, also d/b/a Western Trust and Savings Company, Debtor.	Case No. 84-01461-W (Chapter 11)
R. DOBIE LANGENKAMP, Successor Trustee, Plaintiff-Appellee.	Adv. No. 86-0344-C
vs.	
KEN R. ISBELL et al., Defendants-Appellants.	Dist. Ct. No. 92-C-615-E

ENTERED ON DOCKET
DATE MAR 1 1993

ORDER

Comes now before the Court for its consideration the above styled parties' Stipulation of Dismissal pursuant to Rule 41(a)(1)(ii) Fed. R. Civ. Proc. After review, the Court finds said Stipulation of Dismissal is hereby granted.

ORDERED this 25th day of February, 1993.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
DATE MAR 1 1993

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MITCHEL S. ZABIENSKI and PATTI ZABIENSKI,

Plaintiffs,

vs.

THE WHITLOCK CORPORATION, a foreign corporation, d/b/a WHITLOCK AUTO SUPPLY,

Defendant and Third-Party Plaintiff,

vs.

ALAMEDA INVESTORS II, LTD.,

Third-Party Defendant.

No. 91-C-720-C

O R D E R

By Order entered on January 20, 1993, the Court denied the motion for summary judgment of Third-Party Defendant Alameda Investors, II, Ltd. ("Alameda") as to Third-Party Complaint of defendant Whitlock Corporation ("Whitlock"). A Pre-Trial Conference was held on January 22, 1993, and the Court revisited the issues raised by the motion. The parties have filed supplemental briefs and the Court has concluded that the motion should be granted.

Plaintiffs' Amended Complaint, filed February 6, 1992, alleges that on September 5, 1989, plaintiff Mitchel Zabienski was a business invitee in defendant's store when he slipped and fell in water which was standing on the premises' floor. Whitlock leases the premises from Alameda. At the Pre-Trial Conference,

plaintiffs' counsel stated that his theories of negligence as to Whitlock were (1) failure to warn and (2) failure to guard against a known danger. Plaintiffs do not proceed against Alameda. On March 19, 1992, defendant filed a third-party action against Alameda, alleging that the water upon the leased premises was due to leakage from adjacent premises owned by the landlord, Alameda. Relying upon three paragraphs of the Lease Agreement between the parties, Whitlock bases its third-party action solely on the theory that Alameda is liable in indemnity to its tenant Whitlock. The Court will repeat the lease provisions upon which Whitlock relies:

> Article VIII. Maintenance and Repair of Premises. 8.1 Landlord shall keep the foundation, the exterior walls (except [1] fronts, plate glass windows, doors, door closure devices, window and door frames, molding, locks and hardware and painting or treatment of interior and exterior walls) and roof of the Demised Premises in good repair, except that Landlord shall not be required to make any repairs occasioned by the act or negligence of Tenant, its agents, employees, subtenants, licensees and concessionaires, which repairs shall be made by Tenant. In the event that the Demised Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give immediate written notice thereof to Landlord and Landlord shall not be responsible in any way for failure to made any such repairs until a reasonable time shall have elapsed after delivery of such written notice. Landlord's obligation hereunder is limited to repairs specified in this Article VIII, Section 8.1 only, and Landlord shall have no liability for any damages or injury arising out of any condition or occurrence causing a need for such repairs. Except for

[1]The words indicated by blanks are illegible in the copy provided to the Court.

Landlords Negligence[2].

ARTICLE XIII. Indemnity, Public Liability Insurance and Fire and Extended Coverage Insurance. 13.1 Landlord shall not be liable to Tenant or to Tenant's employees, agents or visitors, or to any other person or entity, whomsoever, for any injury to person or damage to or loss of property on or about the Demised Premises or the Common Area caused by the negligence or misconduct of Tenant, its employees, subtenants, licensees invitees or concessionaires, or arising out of the use of the premises by Tenant and the conduct of its business therein, or arising out of any breach or default by Tenant in the performance of it obligations hereunder or resulting from any other cause except Landlord's negligence, and Tenant hereby agrees to indemnify Landlord and hold it harmless from any loss, expense or claims arising out of such damage or injury.

ARTICLE XIV. Non-Liability for Certain Damages. 14.1 Except for Landlord's own negligence Landlord and Landlord's agents and employees shall not be liable to Tenant or any other person or entity whomsoever for any injury to person or damage to property caused by the Landlord or other portions of the Shopping Center becoming out of repair or by defect in or failure of equipment, pipes or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, nor shall Landlord be liable to Tenant or any other person or entity whomsoever for any loss or damage that may be occasioned by or through the acts or omissions of other tenants of the Shopping Center or of any other persons or entities whomsoever, excepting only duly authorized employees and agents of Landlord. With respect to latent or patent defects in the Demised Premises or in the building of which they form a part, Landlord's liability shall not extend beyond one year from the date of substantial completion of the construction

[2]The references to landlord's negligence in Articles VIII and XIV are handwritten additions. Alameda has not disputed that they are properly provisions of this lease.

> of the Demised Premises, whether or not such defects are discovered within such one-year period. Tenant shall indemnify and hold Landlord harmless from any loss, cost, expense or claims arising out of such injury or damage referred to in this Article XIV, Section 14.1.

Oklahoma law provides for an express right of indemnity in 15 O.S. §§421-430. Indemnity is defined therein as a type of contract. Id. at §421. Whitlock relies solely upon the language of the Lease Agreement as establishing a contractual duty. A court may not read into an indemnity contract that which does not actually appear in it or which is not warranted by a reasonable interpretation thereof; further, the language employed must clearly and definitely show an intention to indemnify against the loss or liability involved. See Allied Hotels Co. v. H. & J. Constr. Co., 376 F.2d 1, 2 (10th Cir. 1967). After careful study of the paragraphs quoted above, the Court cannot conclude that the described standard is met. The only instances of the use of the word "indemnify" refer to Tenant's indemnification of the Landlord, not vice-versa. The paragraphs do contain references to Landlord's "liability" for its own negligence, but generally the owner is not liable for injuries to an invitee that arise from a danger which was obvious or should have been observed in the exercise of due care. See Weaver v. United States, 334 F.2d 319, 321 (10th Cir. 1964). The record in this case demonstrates that the injury involved was not the result of a hidden danger. Therefore, no liability apparently exists as between plaintiffs and Alameda. Even if Whitlock and Alameda are properly considered joint tort-feasors, at common law Oklahoma gave no right of contribution or

indemnity to a joint tort-feasor. See Peak Drilling Co. v. Halliburton Oil Well Cement Co., 215 F.2d 368, 369 (10th Cir. 1954). The right of contribution has since been created by statute, but the law of indemnity is unaffected. See 12 O.S. §832(F). For the reasons recited above, the Court concludes that Whitlock's indemnity action may not be maintained.

It is the Order of the Court that the motion of third-party defendant Alameda Investors, II, Ltd. for summary judgment is hereby granted. The Court's Order of January 20, 1993 is hereby vacated.

IT IS SO ORDERED this 26th day of February, 1993.

H. DALE COOK
UNITED STATES DISTRICT COURT

922727053

Attorney ID#11352

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE MAR 1 1993

FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity,

Plaintiff,

vs.

RENEE SARTAIN a/k/a DR. RENE M. SARTAIN a/k/a MADELYN RENEE SARTAIN a/k/a RENEE SARTAIN, D.O., a single person; GEORGE L. SARTAIN a/k/a GEORGE SARTAIN and EVELYN R. SARTAIN a/k/a EVELYN SARTAIN, husband and wife, UNITED STATES OF AMERICA by and through the Department of the Treasury ex rel INTERNAL REVENUE SERVICE,

Defendants.

and

THE TULSA ANCHORAGE CLUB, INC.,

Additional Party Defendant.

Civil Action No. 92-C-900 C

FILED

FEB 26 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT OF FORECLOSURE

This cause coming before the court on this 26 day of Feb, 1993, before the undersigned Judge of the United States District Court of the Northern District of Oklahoma; plaintiff, being present by its attorney, Works, Lentz & Pottorf, Inc., through K. Jack Holloway; the defendants, RENEE SARTAIN, GEORGE L. SARTAIN and EVELYN R. SARTAIN, appearing by and through their attorney, Scott P. Kirtley; the defendant UNITED STATES OF AMERICA by and through the Department of the Treasury ex rel INTERNAL REVENUE SERVICE, appearing by and through its attorney, Phil Pinnell; the defendant, THE TULSA ANCHORAGE CLUB, INC., having been duly served with summons in this cause more

than 20 days prior to this date, and having failed to appear, plead, or answer to the Petition of the plaintiff, came not, but wholly made default.

Thereupon, said cause coming on for hearing before the Court, and the Court, after having considered the pleadings filed herein and hearing the statements of counsel, finds that all of the allegations contained in the Petition of the plaintiff filed herein are true.

The court finds that the plaintiff's mortgage is in default and plaintiff is entitled to a decree of this Court foreclosing its mortgage upon the real property described below in satisfaction of its claim.

The Court further finds that Title 68 O.S., Section 1171, et seq., of the Statutes of the State of Oklahoma regarding mortgage tax has been satisfied by the plaintiff.

The Court finds that there is due from said note and mortgage sued on in this action, $186,926.20 with interest thereon, accrued from the date of default per annum until judgment, plus interest thereafter at the legal rate until fully paid, plus $173.00 for abstracting expense, plus $1,800.00 for attorney's fees, with interest from the date of judgment at the legal rate until fully paid, together with costs of this action, both accrued and accruing, and expenses which plaintiff continues to incur while this action is pending.

The Court finds that the plaintiff has a first and prior lien on the property described in the mortgage set out in the petition, to secure the payment of indebtedness, interest, late charges, abstracting costs, attorneys' fees continuing expenses and costs, said property being described as follows, to–wit:

> Lot Six (6), Block Two (2), THE TULSA ANCHORAGE CLUB, INC. ESTATES, an addition in Wagoner County, State of Oklahoma, according to the recorded Plat thereof.

The court finds that there is due from the defendants, GEORGE L. SARTAIN a/k/a GEORGE SARTAIN and EVELYN R. SARTAIN a/k/a EVELYN SARTAIN, husband and wife,

to the defendant, UNITED STATES OF AMERICA by and through the Department of the Treasury ex rel INTERNAL REVENUE SERVICE,, the amount of $46,110.93 and $107,160.60 together with penalty, interest, and credits accruing thereon from the date of tax assessment until paid and UNITED STATES OF AMERICA by and through the Department of the Treasury ex rel INTERNAL REVENUE SERVICE, has a valid lien on the property to secure said amounts by virtue of a federal tax lien, Serial Number 739012393, dated August 1, 1990, filed August 27, 1990, in the office of the Wagoner County Clerk and Serial Number 739109429,dated March 29, 1991, filed April 8, 1991, in the office of the Wagoner County Clerk. The lien is junior and inferior to the mortgage lien of the plaintiff.

The plaintiff has elected to have the property sold with appraisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that all of the allegations of plaintiff's Petition are true and plaintiff shall have and recover judgment in rem of and from the defendant, RENEE SARTAIN a/k/a DR. RENE M. SARTAIN a/k/a MADELYN RENEE SARTAIN a/k/a RENEE SARTAIN, D.O., a single person, for $186,926.20 with interest thereon, accrued from the date of default, through the date of judgment at the rate of 15.500% per annum, plus $173.00 for abstracting expense; and judgment in rem of and from the defendants, GEORGE L. SARTAIN a/k/a GEORGE SARTAIN and EVELYN R. SARTAIN a/k/a EVELYN SARTAIN, husband and wife, for $41,975.17, with late charges and interest thereon at the rate specified in the guaranty agreement per annum from the date of default until paid, expenses incurred by plaintiff, plus $1,800.00 for attorney's fees, together with costs of this action, both accrued and accruing, and expenses which plaintiff continues to incur while this action is pending, for all of which let execution issue against the property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the mortgage in favor of plaintiff set forth in plaintiff's Petition is established and adjudged to be a valid and first lien upon the real property described as follows, to-wit:

> Lot Six (6), Block Two (2), THE TULSA ANCHORAGE CLUB, INC. ESTATES, an addition in Wagoner County, State of Oklahoma, according to the recorded Plat thereof.

This lien is prior and superior to the right, title, interest, and lien of each defendant and of all persons claiming by, through, or under any defendant since the filing of the Notice of Pendency of Action in the office of the county clerk. The amounts found due on the note set forth in plaintiff's Petition and for which judgment is rendered for plaintiff are secured by said mortgage.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the defendant, UNITED STATES OF AMERICA by and through the Department of the Treasury ex rel INTERNAL REVENUE SERVICE, has a good and valid lien against the defendants, GEORGE L. SARTAIN and EVELYN R. SARTAIN, in the amount of $46,110.93 and $107,160.60, together with penalty, interest, and credits thereon from the date of tax assessment until paid, on the real property described heretofore, subject, however, to the prior lien of the plaintiff as described above, and further subject to foreclosure as hereinafter directed, provided the United States of America shall have its statutory right of redemption pursuant to 28 U.S.C. § 2410.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that either the United States Marshal for the Northern District of Oklahoma or the Sheriff of Wagoner County, Oklahoma, shall levy upon the above described real property and advertise and sell the same, with appraisement, according to law. The proceeds from said sale shall be distributed according to law as follows:

a. To payment of the costs of said sale and of this action;

b. To payment of the judgment of the plaintiff;

c. To payment of the judgment lien of the defendant, UNITED STATES OF AMERICA by and through the Department of the Treasury ex rel INTERNAL REVENUE SERVICE;

d. The residue, if any, shall be paid to the Clerk of the Court to await the further Order of the Court.

Upon confirmation of the sale, the United States Marshal of said District or the Sheriff of said County shall execute and deliver a good and sufficient deed to the premises to the purchaser which shall convey all the right, title, interest, estate, and equity of all defendants, and all persons claiming by, through, or under such defendants since the filing of the Notice of Pendency of Action in the office of the County Clerk, in and to said real property, except as provided by law; and save and except the statutory right of redemption accorded the United States of America pursuant to 28 U.S.C. § 2410; upon application of the purchaser, the Court Clerk shall issue a Writ of Assistance to the United States Marshal or the Sheriff, who shall forthwith place the purchaser in full and complete possession and enjoyment of the premises.

(Signed) H. Dale Cook

JUDGE OF THE DISTRICT COURT

APPROVED:

WORKS, LENTZ & POTTORF, INC.

By _____
K. Jack Holloway, OBA #11352
Mapco Plaza Building
1717 South Boulder, Suite 200
Tulsa, Oklahoma 74119
(918) 582-3191

2675.003

FEDERAL DEPOSIT INSURANCE CORPORATION,
in its corporate capacity,
vs. RENEE SARTAIN et al
United States District Court Case No. 92–C–900 C
Journal Entry of Judgment

APPROVED:

ROBINSON, LEWIS, ORBISON
SMITH & COYLE

By: Scott P. Kirtley

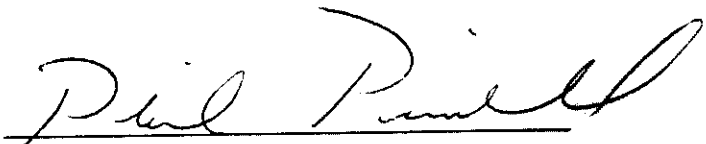
Scott P. Kirtley, OBA #11388
P O Box 1046
Tulsa, Oklahoma 74101
(918) 583–1232

Attorney for Defendants
RENEE SARTAIN, GEORGE L. SARTAIN and
EVELYN R. SARTAIN

2675.003.7

FEDERAL DEPOSIT INSURANCE CORPORATION,
in its corporate capacity,
vs. RENEE SARTAIN et al
United States District Court Case No. 92–C–900 C
Journal Entry of Judgment

APPROVED:



Phil Pinnell, OBA #7169
Assistant United States Attorney
3900 U S Courthouse
Tulsa, Oklahoma 74104
(918) 581–7463

Attorney for Defendant
UNITED STATES OF AMERICA by and
through the Department of the Treasury
ex rel INTERNAL REVENUE SERVICE

2675.003.7

ENTERED ON DOCKET

MAR 1 1993

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BILL G. PITTS; LORENE H. PITTS; JEAN BISHOP; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma,

Defendants.

FILED

FEB 26 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 92-C-737-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25 day of February, 1993. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by J. Dennis Semler, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendants, Bill G. Pitts, Lorene H. Pitts, and Jean Bishop, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendants, Bill G. Pitts and Lorene H. Pitts, acknowledged receipt of Summons and Complaint on August 31, 1992; that Defendants, County Treasurer, Tulsa County, Oklahoma and Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 27, 1992.

NOTE

PAPER SERVED UPON RECEIPT.

The Court further finds that the Defendant, Jean Bishop, was served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning December 3, 1992, and continuing through January 7, 1993, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Jean Bishop, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, Jean Bishop. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to her present or last known place of

residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on September 16, 1992; that the Defendants, Bill G. Pitts, Lorene H. Pitts, and Jean Bishop, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> The South Half (S/2) of Lot Two (2), Block Ten (10), TOWN OF RED FORK, now an addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on August 5, 1985, the Defendants, Bill G. Pitts and Lorene H. Pitts, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of $40,000.00, payable in monthly installments, with interest thereon at the rate of 11.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Bill G. Pitts and Lorene H. Pitts, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated August 5, 1985, covering the above-described property. Said mortgage was recorded on August 5, 1985, in Book 4882, Page 250, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Bill G. Pitts and Lorene H. Pitts, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Bill G. Pitts and Lorene H. Pitts, are indebted to the Plaintiff in the principal sum of $38,682.85, plus interest at the rate of 11.5 percent per annum from October 1, 1991 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of $234.00 for publication fees.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of $17.00 which became a lien on the property as of 1991. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that the Defendant, Jean Bishop, is in default and has no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, **Bill G. Pitts and Lorene H. Pitts**, in the principal sum of $38,682.85, plus interest at the rate of 11.5 percent per annum from October 1, 1991 until judgment, plus interest thereafter at the current legal rate of 3.45 percent per annum until paid, plus the costs of this action in the amount of $234.00 for publication fees, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of $17.00 for personal property taxes for the year 1991, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Jean Bishop and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Bill G. Pitts and Lorene H. Pitts, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, County Treasurer, Tulsanty, Oklahoma, in the amount of $17.00, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under

and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

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Judgment of Foreclosure
Civil Action No. 92-C-737-E

PP/css